STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

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DEPOSITION OF THE TOBACCO INSTITUTE

(Designee David M. Horazdovsky)

Volume I, Pages 1 - 216

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(The following is the deposition of The Tobacco Institute (Designee David M. Horazdovsky), taken pursuant to Notice of Taking Deposition, under Rule 30.02(f), by videotape, at the offices of Robins, Kaplan, Miller & Ciresi, 2800 LaSalle Center, 800 LaSalle Avenue, Minneapolis, Minnesota, commencing at approximately 9:12 o'clock a.m., October 16, 1997.)

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P R O C E E D I N G S

(Witness sworn.)

MR. FLYNN: Before we begin, let me make two statements for the record. One, it is the position of the defense that the lobbying activities of The Tobacco Institute are privileged by the First Amendment and no civil liability can rest on the exercise of those rights. So we're producing this witness as we've produced those records germane to this issue, fully reserving those rights which we intend to assert if this issue comes up by the plaintiff at trial.

Second, more housekeeping, it is our understanding this is a three-hour deposition based on the statements of Ms. Walburn and the agreement of counsel, so we would expect or anticipate it will be done -- it's around 9:15 -- by 12:15, with the addition for breaks.

MS. WIVELL: Well Mr. Flynn, with regard to your second position, as you know, we noted the Rule 30.02(f) deposition of The Tobacco Institute, and the first three subjects that were discussed were -- were combined with the Walker Merryman deposition, which I terminated early. I hope to be through in approximately three hours, but it's our position that

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we're not limited to three hours because we have, A, first, in the meet and confer, estimated the time that would be used for this deposition, it was never a steadfast guarantee, and I've had read the transcripts of the two meet and confers that were related to that; number two, as you told me when we were taking Walker Merryman's deposition, I have 20 hours and you didn't care how I used them, and when we finished Walker Merryman's portion of this deposition, I finished a complete day early, so I have no trouble -- I feel no compunction taking whatever time I need to do the job because I have at least 10 hours left of the deposition time.

So I suggest we just proceed, go forward, see how we do, and try and get the job done.

MR. FLYNN: It's my --

It's my recall, and we'll read it if we have to, that in the deposition of Merryman we mentioned and talked about the three-hour limit based on Roberta's statement. But I'm amenable to your -- go ahead, let's start, and hopefully it will be academic.

MS. WIVELL: Hopefully.

DAVID M. HORAZDOVSKY

called as a witness, being first duly sworn, was examined and testified as

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follows:

ADVERSE EXAMNATION

BY MS. WIVELL:

Q. All right. Sir, would you introduce yourself to the ladies and gentlemen of the jury?

A. My name is David Mark Horazdovsky.

Q. Sir, have you ever been deposed before?

A. One time.

Q. Let me introduce myself. My name is Martha Wivell and I represent the State of Minnesota and Blue Cross Blue Shield in the case that's been brought by those two entities against the various tobacco companies and The Tobacco Institute.

Now you said you've been deposed before, sir?

A. Ten, 15 years ago.

Q. What was the nature of the deposition?

A. It was -- had to do with the company that I worked for at the time. It was an employment matter. Nothing to do with this case.

Q. By whom are you currently employed?

A. I'm employed by The Tobacco Institute.

Q. How long have you been employed by The Tobacco Institute?

A. Almost one year.

Q. So you would agree that tobacco pays your

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salary; doesn't it?

A. I work for The Tobacco Institute.

Q. Well, and tobacco is what makes The Tobacco Institute; isn't it?

MR. FLYNN: That's just argumentative. The salary --

He's answered the question.

A. I work for The Tobacco Institute.

Q. And now, sir, how much is your salary?

A. I would say it's probably in the range of $85,000. I don't really know what my salary is, if you want to know the truth.

Q. Well in addition to your --

I'm sorry. Do you get a check every couple of weeks?

A. I get a check every two weeks.

Q. All right. And in addition to that check, do you get a bonus?

A. No, ma'am.

Q. Do you get any other kind of stipend?

A. There are --

I get health insurance. There are -- there's a retirement program, which I am not a member of at this point; I'm not eligible at this point. But I work for a salary.

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Q. All right.
A. It's an honorable thing.
Q. Is any part of that salary used to make political action committee cam -- or campaign donations?
A. Are you asking me if I make contributions to political candidates?
Q. Well let's start it this way, sir: Is any part of your salary designated to make PAC donations?
A. No.
Q. Are you encouraged by your employer to make PAC donations?
A. No one at The Tobacco Institute has ever discussed political contributions with me.
Q. Ever.
A. Ever.
Q. Has anyone from any other tobacco company ever discussed political donations with you?
A. In --
I'm not quite sure what you're asking.
Q. Well, sir, you know what PAC donations are.
A. Right, yes.
Q. Has anyone ever suggested that money that you have, for example, be directed to a particular polit -- politician's campaign --

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A. Not to my knowledge. That --
Q. You have to let me finish, sir.
A. I'm sorry.
Q. Okay?
A. I thought I understood what you were asking.
Q. All right.
Has anyone ever directed you to make political campaign donations to a particular politician?
MR. FLYNN: Just -- just --
I'm going to object to this until and unless it's restricted to tobacco or the tobacco industry, tobacco representative or tobacco principal. There's just absolutely no legitimacy to inquiring of this man's activities for other people, other entities.
MS. WIVELL: All right, sir, let me rephrase the question to try and meet Mr. Flynn's objection.
BY MS. WIVELL:
Q. Has anyone within the tobacco industry, its representatives or principals, ever directed you to make political campaign donations to a particular politician or his or her campaign fund?
A. I do not recall any such comment from anybody involved in the tobacco industry to me.
Q. All right. Now you understand that political

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action committee donations are different than donations to a candidate; right?

A. Uh-huh.

Q. All right.

THE REPORTER: Your answer?

THE WITNESS: My answer is yes, I understand that distinction.

Q. All right. Let me ask -- try and ask the questions again.

Have you ever donated money to a political action committee?

MR. FLYNN: Again I ask that it be restricted to tobacco.

A. Have --

I'm very unclear on what you're asking here. Are you asking in my role as an employee of The Tobacco Institute have I -- have I ever donated money to a political action committee?

Q. No, sir, that's not my question. I'm asking whether -- since you --

You've been a lobbyist for the tobacco industry for a long --

A. For a long time.

Q. -- time; haven't you?

A. Yes.

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Q. Sir, you must wait until I'm through with my questions.
A. Okay.
Q. The reporter will chide us both. And you just did it again.
A. I hate being chided. I'm sorry.
Q. All right.
Have you ever donated money since you have been a member of the lobbying team for the tobacco industry to a particular politician?
A. During my work as a lobbyist I have participated in making political donations to PACs and candidates.
Q. Both PACs and candidates; right?
A. Uh-huh.
THE REPORTER: Your answer?
THE WITNESS: To the best of my knowledge, yes.
MR. FLYNN: He needs a "yes" or "no."
THE WITNESS: Yes. I'm sorry.
MR. FLYNN: That's what he's griping about, instead of a "uh-huh" or something.
THE WITNESS: Okay.
MR. FLYNN: Because he can't --
THE WITNESS: I'll get rid of the Fargo accent and say "yes" and "no."

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That was a "yes," by the way.

Q. All right. Where did the money come from that you made these donations to either PACs or candidates?

A. They came from my salary as an employee of -- either as a lobbyist or as an employee of the lobbying firm. There are --

Laws on contributions change fairly often, but I would -- I don't recall a time ever when anything but personal money has been allowed either to flow into PACs or has been allowed to be accepted by an individual politician. So the money --

Any contributions that may have been made would have come from my personal money.

Q. Well sir, how long have you been a lobbyist for the tobacco industry?

A. I believe the first year that I worked on tobacco issues as a lobbyist was probably somewhere in the mid-'80s. I don't recall --

I wouldn't be able to recall right now the exact year, but it's been probably since the early or mid-'80s, '84, '85, '86, something in there, --

Q. Now --

A. -- to the best of my recollection.

Q. -- how did you get involved with being a tobacco

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industry lobbyist?
A. The Tobacco Institute was a client of the firm that I was working for.
Q. What firm was that?
A. North State Advisors.
Q. Did did you ever receive, while you were with North State Advisors, money earmarked -- money as part of your salary earmarked for donations to either PACs or candidates?
A. No.
Q. There was never any informal agreement that money that you were given as part of your salary while you were at North State Advisors would be donated to PACs or candidates?
A. Not to my recollection, there was not.
Q. North State Advisors has a PAC; doesn't it?
A. I'm not sure if they still have a PAC. They had a PAC during the time that I worked there.
Q. All right. And they utilized PAC money to make donations to various legislators, for example, who were considered to be allies of the tobacco industry.
A. I would not say that that's a true statement.
Q. All right. Well how would you characterize it, sir?
A. They used --

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I think probably the most accurate way to characterize that PAC and most of the PACs that are active and/or have been active in this state is that they're generally used to respond to funding requests either made by individual legislators or by caucuses. It would --

Most of those records, I believe, are public; I think it would be an easy thing to go back and take a look at who received how much. I know legislators are required to report the sources of all their contributions over a hundred dollars, and I believe that stuff is all public record. But I --

It would not be accurate to say that that money was used to -- was given to friends of any industry. North State is a -- was a fairly broad-based lobbying firm. Tobacco was one of many clients.

Q. Did anyone at North State ever suggest any PACs or candidates to whom you should give political contributions?

A. Personally?

Q. Yes, sir.

A. No one at North State ever told me who to give money to.

Q. Did anyone at North State ever suggest any PAC or candidate to whom you should give money?

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A. I'm not sure what you mean by "suggest." I mean I don't know -- I don't know exactly what you're asking for here. Excuse me, but I don't.

Q. Well --

MR. FLYNN: Let me --

Q. -- did anyone --

MR. FLYNN: Let me -- wait. Just let me put on, I don't -- I had the sense this was preliminary. This is a 30.02 representative deposition of what The Tobacco Institute has done in lobbying and that type of thing. You are not questioning at all with respect to The Tobacco Institute's activities. You are questioning this man as a separate witness on activities that he engaged in for whoever, for whatever clients, for whatever employment, and I view it as far beyond the scope of the 30.02 deposition that you've noticed and for which this witness is being produced. In my understanding, you're entitled to ask him anything you want about The Tobacco Institute's activities, lobbying, any of those kinds of things, but what he does and how he did work for some other entity in another employment is not within the scope of this deposition. And -- and we're going to stop the deposition if you persist in these areas because it

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has nothing to do with what this witness is being produced for.

BY MS. WIVELL:

Q. Sir, let me repeat my question.

A. Okay.

Q. While North State was lobbying on behalf of the tobacco industry, did anyone at North State ever suggest or -- not command, but in some way imply that you ought to give money to a particular PAC or a particular candidate?

MR. FLYNN: Okay. I have the same objection. I --

We're going to take a break here because I'm going to find out --

MS. WIVELL: Well counsel, he's already told us --

MR. FLYNN: We're going to take break, counsel.

MS. WIVELL: -- that The Tobacco Institute was a client of North State.

MR. FLYNN: We're going to take a break at this stage. I'm going to visit with the people and we'll take five minutes and we'll be back.

THE REPORTER: Off the record, please.

(Recess taken.)

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MR. FYNN: I renew my objection. I'm going to instruct him not to answer. If this is going to go on, we're going to go down to the court, we'll stop this deposition, get some ground rules.

MS. WIVELL: On what grounds are you instructing him not to answer?

MR. FLYNN: This has nothing to do with his function or capacity as an employee for The Tobacco Institute. It has something to do with his work for another lobbying entity years before on behalf of clients generally, nothing -- there's no focus or connection to The Tobacco Institute, which is the purpose for which he's being offered.

If you want to depose this man as a lobbyist generally and not as a corporate rep, then you can list him on your list of depositions and take it. But he's not going to get into these areas absent that. And if you persist --

He's just not going to answer these questions.

MS. WIVELL: Well let me rephrase the question.

BY MS. WIVELL:

Q. While you were at North State and lobbying on behalf of The Tobacco Institute, including The Tobacco -- I'm sorry. Strike that.

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While you were at North State and were lobbying on behalf of the tobacco industry, including The Tobacco Institute, did anyone at North State ever suggest or imply that you ought to give money to a particular PAC or a particular candidate?

MR. FLYNN: Again I object unless it's restricted to on behalf of The Tobacco Institute or the tobacco industry.

MS. WIVELL: I think I did, counsel.

MR. FLYNN: Well --

A. To the best of my knowledge, I was never instructed or hinted at or told to make any specific donations to any specific PAC or specific candidate.

Q. Well, did anyone ever say anything to you during that period --

You know Howard Orenstein.

A. I know Howard very well.

Q. -- "Give Howard some money?" Did anyone ever say --

A. I don't recall anyone ever saying that to me.

Q. Did anyone ever say that to you with regard to any other legislator in the state of Minnesota that you knew well?

MR. FLYNN: Again I object unless it's restricted for tobacco.

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MS. WIVELL: Yes, sir.

MR. FLYNN: So it's so restricted.

THE WITNESS: For tobacco?

MR. FLYNN: Right.

A. No one ever, on behalf of tobacco, for tobacco, ever made such a suggestion.

Q. Now sir, before you became a Tobacco Institute employee, by whom were you employed?

A. I had a consulting firm called DMH, Incorporated.

Q. All right.

A. A lobbying firm.

Q. How long were you with DMH?

A. I believe seven years.

Q. From when to when?

A. Would have been probably from early 1990 till I became employed by The Tobacco Institute, which was almost a year ago.

Q. Now as part of your lobbying activities at DMH, you were lobbying on behalf of the tobacco industry; weren't you, sir?

A. One of my clients was Philip Morris.

Q. So the answer to my question is yes; right?

A. Yeah. One --

I mean one of my clients was Philip Morris.

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Q. All right. Now --

And you did lobby on their behalf.

A. Yes, I did.

Q. Before you were with DMH, who were you with?

A. I was an employee of North State Advisors.

Q. What is North State Advisors?

A. It's a -- a government affairs consulting firm, lobbyist firm. They do contract work for varying numbers of clients.

Q. And among their clients were various members of the tobacco family; right?

A. I know that they have had a contract with The Tobacco Institute. I'm not aware of any other, as you put it, member of the tobacco family that they've ever worked for. They -- it's not that they haven't; I'm not aware of it. I know they've had a contract with The Tobacco Institute.

Q. And who are the principals of North State Advisors?

A. A gentleman by the name of Thomas Kelm, a gentleman by the name of Albert Hofstede, I believe Andrew Kozak is a partner, and -- I mean there are --

I haven't worked for them for a long time, so I don't know what their current situation is. But during the years I was around, those were the

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partners in that firm.
Q. Are you related to any of these people?
A. I'm related to Mr. Kelm.
Q. You're his son-in-law; aren't you?
A. Right.
Q. And how long have you been his son-in-law?
A. Twenty-three very happy years.
Q. Now you understand that the deposition we're here today is to -- is pursuant to Rule 30.02(f) of the Minnesota Rules of Civil Procedure; right?
A. I have been told that that's the case, yes. I don't know what that rule is, not being a lawyer, but that's what I've been told.
Q. And you understand that The Tobacco Institute is required to produce a person qualified to testify to matters reasonably available or known to The Tobacco Institute concerning lobbying; right?
A. That is my understanding.
Q. And you understand that that notice actually went to the -- the Institute itself; right?
A. Yes.
Q. And they have to designate somebody to be their representative.
A. Correct.
Q. You're their spokesperson here today; aren't

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you?

A. It would seem that I am.

Q. All right. And you've consented to be their spokesperson.

A. Yes, I have.

Q. And you understand that you have authority to speak on behalf of The Tobacco Institute during this deposition; don't you?

MR. FLYNN: I -- I object, it's argumentative, vague and ambiguous. He has whatever the law vests him with in answering these questions.

You can answer it if you understand it.

A. I do understand that.

Q. All right. And you understand that the answers you give today are based -- are supposed to be based not only on what you know personally, but what you learned in preparation for your deposition.

A. Yes.

Q. Did you prepare for your deposition?

A. I spent several hours preparing yesterday, yes.

Q. How did you prepare?

A. I met with my counsel, Mr. Flynn. He went through some documents with me that I believe you've noticed. I think that's the right word. We looked at a few of those things --

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MR. FLYNN: Just don't tell her what we talked about, just the kinds of things generically you did. What we said is privileged.

A. I mean that's about it. We spent a total of maybe four hours.

Q. Did you talk to any of the people who have lobbied on the -- on behalf of The Tobacco Institute in the years before you became a Tobacco Institute employee?

A. In preparation for this deposition?

Q. Yes, sir.

A. No, not to my memory, I've not done that.

Q. All right. Did you read any depositions in preparation for your deposition?

A. I spent a -- a short time taking a look at the deposition of Walker Merryman.

Q. All right. Did you read anyone else's deposition?

A. No, ma'am.

Q. Were any portions of any depositions read to you?

A. No.

Q. Did you talk with any other Tobacco Institute employees in preparation for your deposition today?

A. No.

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Q. Did you talk to anyone at North State Advisors?
A. No.
Q. Now you've mentioned already in this deposition that you're a lobbyist for the tobacco industry; right?
MR. FLYNN: Institute I think he said.
A. I have -- I have lobbied on behalf of The Tobacco Institute. My job today is not as a -- as their contract lobbyist. I mean I have a multi-state region in which we employ lobbyists. I am --
I don't do as much day-to-day lobbying as I did when I was a registered lobbyist for any of my clients --
Q. All right.
A. -- that I work for.
Q. You have a full-time job with The Tobacco Institute.
A. It's a full-time job.
Q. All right. And you have been a lobbyist on behalf of the tobacco industry, it would be fair to say, since you joined North State Advisors?
A. Shortly thereafter. I don't recall working on tobacco issues the first year or so that I was there, but certainly at some point when I was an employee of North State I lobbied tobacco issues.

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Q. All right. Now would you agree that one definition of lobbying is -- or a lobbyist is a person acting for a special interest group who tries to influence the introduction of or voting on legislation or the decisions of government agencies or administrations?

MR. FLYNN: You can have it read back. If you caught it all the first time --

A. I'm not sure if that's a Webster definition of lobbying, but some of those things that you mentioned are things that lobbyists do.

Q. All right. Well you would agree that while you've been a lobbyist for the tobacco industry, you've tried to influence the introduction or voting of legislation?

A. I don't recall --

I'm trying to remember any instance where I had any impact on the introduction of bills. That generally --

Certainly, as a -- as a tobacco lobbyist, historically we don't introduce a lot of legislation. Certainly we are interested in how legislators vote on a given piece of legislation. That's part of the job.

Q. All right. And part of the job also is to try

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and interact with state administrative agencies.
A. There are some issues where that makes sense to do.
Q. Well you've done it; haven't you?
A. I'm sure over the course of my lobbying career I have.
Q. And other things that you have done is that you have gone out and tried to influence the decisions of local or municipal government authorities; right?
A. Personally as a lobbyist?
Q. Yes, sir.
A. I recall an instance in --
There was an ordinance, I think, in the city of Chanhassen several years ago that I actually did attend a city council meeting. But that is not something that I commonly do.
Q. Well sir, you actually lobbied -- were part of the lobbying effort to lobby the entire city council of the city of St. Paul with regard to a smoking ban; weren't you?
A. I do remember being in the council chambers. I don't know that I actually talked to any council members. I do remember being in the chambers.
Q. But you would agree that the lobbying effort on behalf of The Tobacco Institute that you have been

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involved with involves not just the legislature, but state administrative agencies and also municipalities.

A. There -- there definitely are times where all those organizations are of interest --

Q. All right.

A. -- to a lot of lobbying groups, not just tobacco.

Q. But you've lobbied to all three areas; right?

A. Uh-huh. I've certainly spent time in all three years.

Q. Now you have registered as a lobbyist?

A. Yes.

Q. When was the first time you registered as a lobbyist?

A. I don't recall the year. Again, I believe that is all public record and it would be easy enough to find that out.

Q. Now --

But do you recall when you first registered?

A. It had to have been sometime back in the '80s. I mean -- and I don't -- I wouldn't even recall which client it would have been for first.

Q. Because you have to register --

A. Right.

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Q. -- on behalf of a particular client; don't you?
A. Right.
There are thresholds. There are hour thresholds and dollar thresholds that -- that trigger registration for -- for a client.
Q. Now sir, you would agree that there are a number of tools that are available to you as a lobbyist; right?
MR. FLYNN: "Tools?" If you understand it, you can --
A. I don't know what she means as far as a tool is concerned.
Q. Well have you ever testified on behalf of The Tobacco Institute in any formal legislative session?
A. No, not to my memory. I don't think -- I don't believe I have.
Q. Can you direct me to a single instance where any of the registered lobbyists for the tobacco industry have ever testified formally?
A. I recall situations where a gentleman by the name of Douglas Kelm has testified. There may have been others. But yeah, there have -- I mean there have been occasions where a registered lobbyist has testified.
Q. But you have, despite the fact you haven't

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personally testified, arranged for other people to testify on behalf of The Tobacco Institute; right?

A. One of a lobbyist's jobs is to bring the best people with -- you know, with -- with qualifications before a legislative committee, if that's what the legis -- if that's what the committee is interested in.

Q. And that's one of the tools or resources that a lobbyist uses.

A. Witnesses?

Q. Yes.

A. Yes.

Q. All right. And as a lobbyist, despite the fact that you've never testified in your multi-year career as a tobacco lobbyist, you would agree that you have talked to legislators and administrators and municipal authorities to try and convince them to see a particular issue in your light; right?

A. I have spoken to legislators and local -- I'm sure over -- at some point, other people that you've mentioned.

Q. All right. And you've tried to persuade them. You've used the art of persuasion.

A. That's -- I mean if you're having a conversation with someone, we -- I mean you try -- try to do --

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(clearing throat) excuse me.
Q. And the lobbyist --
MR. FLYNN: Were you done?
THE WITNESS: Yeah, I'm finished.
MR. FLYNN: Okay.
Q. And the lobbyists who work on behalf of The Tobacco Institute provide information to the people that they're trying to influence; right?
A. There certainly is information provided by lobbyists.
Q. Okay. And one of the things that lobbyists do -- I'm sorry, strike that.
One of the things that the lobbyists who have been working on behalf of The Tobacco Institute have done in this state is to make political contributions. Isn't that true?
A. As tobacco lobbyists? Is that what you're saying?
Q. Yes, sir.
A. The answer to that question, to the best of my ability, is no.
Q. Well isn't it true --
A. That implies something that isn't part of the -- of the system in this state.
Q. Well isn't it true that the -- that the PAC

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within North State Advisors was utilized on behalf of The Tobacco Institute?

A. Specifically?

Q. Yes, sir.

A. No.

Q. Never has; that's your testimony?

A. Specifically?

Q. Yes, sir.

A. It wasn't called the North State Tobacco PAC. I mean it was not utilized specifically for the -- for any specific client --

Q. Oh, okay.

A. -- to my knowledge. It was not utilized for any specific client of that firm.

Q. Well was money within the North State Advisors PAC, the one they had within the firm, any money, if it -- any portion of that money, used for tobacco purposes?

A. I'm really not sure if I understand what you're asking me. If you're asking me what I think you're asking me, the answer is definitely no. We -- the --

PAC monies, to the best of my knowledge, are not -- I don't know, I assume other firms have internal PACs also, and to the best of my knowledge those monies are not used for the benefit of any

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specific client.
Q. It would be illegal to do so; wouldn't it?
A. I don't know if it would be illegal or not, but it's not the way it happens.
Q. Well let me talk about some of the other things that tobacco lobbyists do do. They do cultivate personal relationships; don't they?
A. More than any other lobbyists? I mean when you say "tobacco lobbyists," I'm real -- I'm getting -- I'm not -- I --
For a lot of my career I'm not just a tobacco lobbyist. Are you asking me if I do things differently when I'm representing a tobacco client than I do when I'm representing another client?
Q. Let me rephrase the question.
Sir, The Tobacco Institute lobbyists have cultivated personal relationships --
A. That --
Q. -- with various legislators, administrators and municipal authorities; right?
A. Tobacco Institute lobbyists act in their professional role like lobbyists for any other group that employs lobbyists --
Q. And one --
A. -- as far as I know.

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Q. And one of the things they do is they cultivate personal relationships; right?
A. We talk to legislators.
Q. And they cultivate personal relationships, don't they?
A. I think most lobbyists cultivate personal relationships with legislators.
Q. All right. Another thing The Tobacco Institute lobbyists have done is to encourage contact by various of their constituents with legislators; right?
A. I can't imagine us doing anything to discourage consumers from contacting a legislator. I mean I would think there are -- that's --

Grassroots-type contacts to legislators are very important. It's input that I think a lot of legislators desire. They need to know what their constituents think.

Q. And isn't it a fact that The Tobacco Institute has focussed -- I'm sorry, the lobbyists for The Tobacco Institute have focussed on trying to develop strong grassroots communications networks with various legislators?
A. I don't know that I'd call them communication networks. There have been issues where I think it's

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been important for constituents to contact their elected representatives, similar in a lot of ways to what the Smoke Free Coalition does, what any number of interest groups at the Capitol do. It's -- you do try to get voters to contact the people who -- who they've elected to public office. That's kind of a basic tenet of the way our government runs.

Q. Sir, do you understand that the tobacco industry has for years employed a single strategy to defend itself on three major fronts: litigation, politics and public opinion?

A. I -- I don't understand that. To my knowledge, I do not understand that.

Q. Showing you what's previously been marked as Plaintiffs' Exhibit 405, this is a letter or a memo from the vice-president of The Tobacco Institute to the then-president of The Tobacco Institute dated May 1st, 1972. And for the record, the Bates number is 87657703.

Sir, the second paragraph of this document says, "For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts -- litigation, politics, and public opinion." Right?

MR. FLYNN: You read it right.

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A. That is what the paragraph says.
Q. And it goes on to say, "While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not - nor was it intended to be - a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of
"creating doubt about health charge -- about the health charge without actually denying it." Right? Have I read it correctly so far?
A. I believe that's what this document says.
Q. Sir, and isn't it true that as a Tobacco Institute lobbyist, that you have been taking part in defending the tobacco industry on the politics and public opinion level?
MR. FLYNN: Just forget the document. Now she's asking you a question.
THE WITNESS: Oh, I see.
MR. FLYNN: So do you want to have it read back?
A. I have endeavored as a lobbyist to accurately, fairly and honestly represent my client's position on specific issues before the legislature.
Q. And you did that as part of this thrust that The Tobacco Institute vice-president refers to in the

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second and third paragraphs of Exhibit 405; right?

MR. FLYNN: I object, it's just argumentative. You've not established the witness saw or read -- ever saw this document. It's dated 1972.

A. I was --

Just graduated from high school then.

I've never met Mr. Panzer. I have no idea --

Q. Well sir, you --

A. I don't know what this is even.

Q. Well you understood when you joined The Tobacco Institute lobbying team, that lobbying was one of the major purposes of The Tobacco Institute; didn't you?

A. Of course.

Q. And as a matter of fact, you understand that there is a special State Activities Division of The Tobacco Institute that's been set up since its inception; right?

A. I work for that division.

Q. And you understand that that state's activities section of The Tobacco Institute has been set up since its inception; right?

A. I don't know that as a fact.

(Discussion off the stenographic record.)

(Plaintiffs' Exhibit 1421 was marked

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for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1421, this is a document entitled "Organization of The Tobacco Institute," bearing Bates number TIMN0015045; correct?

A. Uh-huh. That's what it says.

Q. All right. Would you turn to the second page of the document. That shows an organizational chart for The Tobacco Institute; correct?

A. Uh-huh.

THE REPORTER: Your answer?

Q. You have to answer out loud.

A. Yes. Yes, I'm sorry.

Q. And is this the organization that you understand, as far as the state activities portion of this chart, is in existence today?

A. I'm not sure the number of field regions that we have, and I don't know what the legislative support box is. I don't know who --

That's not saying that it doesn't exist, but I'm not familiar with it.

Q. All right. But you understand that there is board of directors of The Tobacco Institute that oversees an Executive Committee who oversees the

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president, and then that one of the four major areas of The Tobacco Institute is the state activities department.

A.   Uh-huh.

Q.   You have to answer out loud.

A.   Yes, that's clear from this document.

Q.   All right. And you would agree that that organization --

A.   There is a state activities division. I work for it. I already told you that.

Q.   I wasn't through with my question.

A.   I'm sorry, ma'am.

Q.   You understand that that's the organization that has been in existence within The Tobacco Institute as far as you know since you began lobbying for it.

A.   That's correct.

Q.   And you would agree that you began your lobbying activities on behalf of The Tobacco Institute some time during the period you were at North State Advisors.

A.   Correct. Correct.

Q.   Now sir, would you agree sometimes that with lobbyists, it's not what you know, it's who you know?

MR. FLYNN: Objection, it's argumentative.

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A. That is a really broad question. I mean it's -- I -- I suppose that applies in baseball or law. I mean --

You certainly have to spend time in the Capitol to be an effective lobbyist, although I know some that don't. But in the course of your work you meet legislators, you meet public officials, you -- that's where you're spending your work day. You're there.

Q. Well, and isn't it true that the value that North State Advisors had to The Tobacco Institute was in large part because of the access that the principals of that lobbying firm had with the legislative and executive officers of the state of Minnesota?

A. I think the value of North State to the -- to any of their clients is the fact that they understand how to lobby. I mean they -- they understand the process. They understand, you know, where things are physically in the Capitol. It is a -- it would be impossible for someone to be in the lobbying business for any period of time and not meet legislators, meet legislative leaders, meet state officers, and develop some kind of a relationship with them, much like it's impossible, I'm sure, for you to come to work in this law firm every day and not develop relationships with

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partners in your firm and other people here that you work with.

Q. Well sir, isn't it true that there were -- that The Tobacco Institute thought that North State Advisors had a whole lot more value because of the direct entree into both the offices of the legislative and executive leadership that the principals of that firm had?

A. I really don't have the knowledge to answer that question. I assume they were retained by the Institute because --

MR. FLYNN: You've answered it. You don't know.

A. I don't know. I don't know why.

Q. All right. Well let me see if I can help you refresh your recollection, since you're speaking here on behalf of The Tobacco Institute today.

(Plaintiffs' Exhibit 1422 was marked for identification.)

BY MR. FYNN:

Q. Showing you what's been marked as Plaintiffs' Exhibit 1422, this is a document Bates numbered TIMN457803 as its beginning Bates numbers; right?

A. That looks correct.

Q. And this is a tobacco lobbyist evaluation for

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the lobbyists Tom Kelm and North State Advisors; correct?
A. I've never seen this document before, so I -- at this -- and I haven't had a chance to read it. I am not sure what it is. It does say on the second page "Lobbyist Evaluations," however.
Q. All right. Why don't you take a moment and read it.
A. Great. Thank you.
Thank you for the time.
Q. All right. You've had the opportunity to read Exhibit 1422?
A. Uh-huh. Yes, ma'am.
Q. This is an evaluation of Thomas Kelm and North State Advisors that was done by The Tobacco Institute; right?
A. That's what it says.
Q. All right. Now you understand that Mr. Kelm was a former DFL leader and aide to Governor Wendell Anderson; right?
A. Uh-huh. Yes, I understand that.
Q. And as a matter of fact, according to this document, that was considered a plus as far as evaluating Mr. Kelm; true?
MR. FLYNN: I object. The document speaks

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for itself. If you want to read something to him --

But I don't think it's -- unless he wrote it or authored it, that -- for him to interpret the document. Just --

A. Well whoever wrote the -- this document thinks that that's true.

Q. Well this is a document written by someone at The Tobacco Institute analyzing their lobbyist, Tom Kelm; right?

A. It looks to me like, as you've said just previously, that it's an evaluation, which to me means some -- an individual made some individual judgments about a lobbyist's effectiveness. I mean that is what the document says.

Q. The document notes that Mr. Kelm was a DFL leader and former aide to Governor -- to democratic governors and senators, maintains a firm grip on relationships with democratic representatives and senators; right?

A. That's what the document is says.

Q. And then there's a reference to a second principal at North State Advisors; right?

A. Right.

Q. How do you pronounce his last name?

A. Krogseng. Just like it's spelled.

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Q. All right. And from Krogseng was a former Republican Party state chairman; wasn't he?
A. Yes, he was.
Q. He had served many years in positions of administration with Republican governors and senators; right?
A. I'm not familiar with his -- I'm not personally familiar with David's background, other than that he was a former Republican Party chair.
Q. Well at least according to what's written here, those were considered positive items in the evaluation; right?
MR. FLYNN: Again I object, the document speaks for itself. It seems it's just biography to me, but --
A. That's what the document says.
Q. All right. And it also says that both of those people, Kelm and Krog --
I'm going to have trouble with his name. How is it again?
A. Krogseng.
Q. -- Krogseng had direct entree into offices and legislative -- of exec -- I'm sorry, strike that.
And it says that both Kelm and Krogseng have direct entree into offices of legislative and

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executive leadership; right?
A. That's what the document says.
Q. Now sir, do you agree that it is important for The Tobacco Institute to have people of Kelm and Krogseng's respectability as their lobbyists here in the state of Minnesota?
A. I would think any principal looking to hire a lobbyist would want a respected lobbyist.
Q. All right. And do you agree --
A. That's pretty logical.
Q. I'm sorry.
Do you agree or disagree with the statements here concerning these two men that we've just talked about?
MR. FLYNN: The statements you've read?
MS. WIVELL: Yes.
A. I don't disagree with the statements that are here.
Q. All right. Could you turn to point five on the second page. There it asks the question: "What is your opinion of lobbyist's overall track record with The Tobacco Institute during his tenure;" right?
A. That's what the question is.
Q. All right. Goes on to say, "Since 1980, the track record of Tom Kelm and the North State Advisors

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have been exemplary. The obvious exception to this record has been the recent 1985 legislative session when a 5 cent cigarette tax was passed to fund sewer projects and various health related activities." Right?

A. That's what the memo says.

Q. All right. And it goes on to say, "When considering the dozens of legislative measures placed before Mr. Kelm and North State Advisors, including sampling bans, numerous tax measures ranging as high as 72 cents per pack and other legislative matters squelched in the drafting stage, Mr. Kelm and North State Advisors have no peers;" right?

A. That's what the document says.

Q. All right. Do you agree that Mr. Kelm and North State Advisors had no peers when it came to legislative activity on behalf of The Tobacco Institute?

MR. FLYNN: Objection, there's no foundation. Compared to who?

THE WITNESS: Yeah.

MR. FLYNN: I mean that's --

A. To my memory there was no one else lobbying on behalf of The Tobacco Institute during these years, so it would be difficult to compare them to anyone.

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Q. Well at least the author of this document said they have no peers. Do you agree that they were good lobbyists?

MR. FLYNN: That's really a double question, but I guess the question is were they good lobbyists.

A. I think the people at North State are good lobbyists.

Q. All right. Well what bills were referred to here as the legislative matters that were squelched in the drafting stage by Mr. Kelm and North State Advisors?

A. I really would not know.

Q. You just don't know --

A. I don't know.

Q. All right. Let me finish.

You don't know what the author of this document, Exhibit 1422, was referring to when talking about the legislative matters squelched in the drafting stage by The Tobacco Institute's lobbyists; is that right?

A. I do not know what the author of this document was referring to when he wrote those words, or she -- or she wrote those words.

Q. But you are aware of legislative matters that have not gotten beyond the drafting stage as a result

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of lobbying activities which Mr. Kelm and others, including yourself, at North State Advisors did on behalf of The Tobacco Institute; right?

A. I cannot at this time specifically recall any tobacco-related legislation that didn't make it to the drafting stage because of anybody's specific activity. That is not to say that a legislator who had an idea for a bill didn't talk to a lobbyist, some lobbyist, and decide not to proceed with that, but I cannot think of a specific incidence where that is true.

Q. You just can't remember any as you sit here today; right?

A. I -- I would --

I cannot remember any as I sit here today.

Q. And you didn't talk to Mr. Kelm in preparation for your deposition to see what matters he might remember that were squelched in the drafting stage; right?

A. I did not speak to Mr. Kelm in preparation for this deposition.

Q. Now sir --

MR. FLYNN: For the record, it looks like Exhibit 1422 is dated July 31, '85. Go ahead.

Q. Now sir, you understand that one of The Tobacco

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Institute's basic objectives is to fight bills that would raise taxes on cigarettes.

MR. FLYNN: I object. As phrased it's argumentative.

A. I don't know where it comes from. I mean generally tobacco taxes -- tobacco tax increases are opposed by The Tobacco Institute. That's -- that's a true statement.

Q. Okay. Do you know what punitive or restrictive legislation aimed at tobacco would mean, what that phrase would mean?

A. I may have a personal opinion on what punitive legislation is. I'm not quite sure what context you want me to respond. I mean do you --

Are you talking about am I aware of bills that the author has labeled as punitive or that -- I mean I don't -- I don't quite know what context you want me to answer that in.

Q. Well you understand the phrase "the prevention of punitive" -- I'm sorry, strike that.

You understand that the phrase "prevention" -- or "prevent the imposition of punitive or restrictive legislation" is one that's been used by The Tobacco Institute.

A. I think it's --

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MR. FLYNN: Have you --

THE WITNESS: Yes.

MR. FLYNN: Do you know if it's ever been used or not?

A. I'm sure it has been used by The Tobacco Institute.

Q. All right. Let me show you --

A. Would it be possible to take a little bit of a break?

Q. Sure. All you have to do is say the word.

A. Thank very much.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MS. WIVELL:

Q. Sir, you would agree that for at least the last 15 years, the tobacco industry has considered Minnesota to be a bellwether state; hasn't it?

A. I think that's an accurate statement.

Q. And as a result of this designation of Minnesota as a bellwether state, extraordinary resources have been expended on behalf of the tobacco industry to try and prevent what it viewed as anti-tobacco legislation from becoming law here in the state of Minnesota.

MR. FLYNN: I object, it's vague and

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ambiguous, what you mean by "extraordinary," whatever that word was. It's so vague it can't be answered.

A. I have --

I have nothing to judge what would make what expenditure extraordinary here versus some other state. I have no basis on which to make that kind of a judgment.

Q. Well sir, you have been a lobbyist on behalf of the industry not only in the state of Minnesota but in at least four other states; right?

A. I have not lobbied in four other states. I have -- I have lobbyists in -- in other states.

Q. And you're aware that the expenditures that the tobacco industry has made in the state of Minnesota far outspent what has been spent in the other states in which you have lobbyists; right?

MR. FLYNN: Again I have the same objection, it's so vague and ambiguous with or without the inflection of what you mean by "far outspent."

A. I don't know what "extraordinary" is in that context. I mean is there more money spent here than this North Dakota? I suspect that there is. Is there more money spent here than in California? I sus -- I don't know the answer to that. I don't know

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that. I know that this is considered to be a very --
Tobacco issues are -- are very prominent in this state.
Q. All right. I'd like to talk for a minute about the tobacco family in the state of Minnesota. You've heard reference to that phrase, "the tobacco family;" haven't you, sir?
A. Yes, I've heard reference to that phrase.
Q. It's used by The Tobacco Institute lobbyists from time to time; isn't it?
A. I'm sure that -- well I have no --
I mean I can't tell you on such and such a date that somebody used that, but I suspect that those words have crossed the lips of lobbyists.
Q. All right. Tobacco industry lobbyists; right?
A. I think that's who we're talking about here.
Q. I just wanted to make sure.
Now you would agree that the tobacco family in Minnesota is not just the tobacco industry lobbyists; right?
MR. FLYNN: If you understand that.
A. I don't -- I --
MR. FLYNN: Don't speculate. If you don't know --
A. I don't know.

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MR. FLYNN: -- what she's talking about, tell her.

Q. Well you understand that, in addition to The Tobacco Institute lobbyists, Philip Morris has lobbyists here. You were one of them.

A. They do. They do.

Q. R. J. Reynolds Tobacco has lobbyists here in the state of Minnesota.

A. They do.

Q. And in addition to those lobbyists, there are other lobbyists who have interests which are considered akin to or similar to The Tobacco Institute lobbyists' interests; right?

A. It would be helpful if I knew who you were referring to.

Q. Well you understand that there are cooperative agreements that The Tobacco Institute has signed with, for example, the Minnesota Tobacco and Candy Distributors; right?

A. I have no knowledge of a cooperative --

I don't know how you're defining "cooperative agreement," but I don't have any knowledge of that, as I understand "cooperative agreement." I know that we --

MR. FLYNN: You've answered it.

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THE WITNESS: Thank you.

(Discussion off the stenographic record.)

(Plaintiffs' Exhibit 1423 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1423, this is a letter from Sam Chilcote, president -- I'm sorry. This is a letter to Sam Chilcote, president of The Tobacco Institute, from Thomas A. Briant; right?

A. Right.

Q. Who is Mr. Briant?

A. Mr. Briant is an attorney in town.

MR. FLYNN: For the record, it's dated December 28th, 1990.

A. I believe Tom is the executive director of a wholesale group in Minnesota. They wholesale tobacco, among other products. I don't even -- I'm not --

I believe they've changed their name from this. I think it's the Minnesota Wholesalers Association, something like that. But that's the group that Tom is with.

Q. All right. But "this," you were pointing to --

A. The Minnesota Candy and Tobacco.

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Q. Sir, you have to let me finish.
A. I'm sorry.
Q. You were pointing to the letterhead that says Minnesota Candy and Tobacco Association, Inc.; right?
A. Correct.
Q. And this letter is a cover letter that attaches an agreement that is a contract between the counsel for the Minnesota Candy and Tobacco Association and The Tobacco Institute; right?
A. That's what it looks like. I have not had an opportunity to read this completely.
Q. No one's shared this document with you before, sir?
A. I may have seen this before, but I don't recall reading it.
Q. All right. Well why don't you read it with an eye toward answering the question of whether this document comprises an agreement between The Tobacco Institute and the Minnesota Candy and Tobacco Association for the calendar year 1991, a cooperative agreement.
A. Thank you, I'll do that.
I've read the document.
MR. FLYNN: Did you read the last page, too?

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Q. Sir, you've now read Exhibit 1423?
A. Yes, ma'am.
Q. And it does comprise an agreement between The Tobacco Institute and the Minnesota Candy and Tobacco Association; doesn't it, sir?
A. It looks like a contract between those two entities, correct.
Q. And pursuant to that contract The Tobacco Institute was going to pay $20,000 a year to the Minnesota Candy and Tobacco Association; right?
A. That's what the document says.
Q. And one of the purposes of this agreement was to help attain joint legislative goals; right?
A. That's --
MR. FLYNN: It speaks for itself.
A. -- what it says.
Q. And those goals are listed on the last page of the document; isn't that true?
A. There is a list of issues on the last page of this document.
Q. And those were issues that, according to the document, were common to the two associations; right?
MR. FLYNN: Again, the document speaks for itself. If you can focus the witness where that's

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said, we can move on. I don't see where that reference is made, but --

Q. Sir, directing your attention to the second paragraph on the first page, it ends, "A list of these and other primary issues" --

A. Are you on the first page of the letterhead with Tobacco Institute?

Q. I'm sorry, strike that.

Turning your attention to the second paragraph of the second page, it ends by reference to "A list of these and other primary issues in which we share an interest is attached for your information;" correct?

A. Correct, that's what it says.

Q. And that list is found on the last page of the exhibit; right?

A. There is a list on the last page of the exhibit.

Q. And the list of issues in which The Tobacco Institute shares a common interest with the Minnesota Candy and Tobacco Association is included at the last page of the document; right?

A. There is a list attached to the last page of the document. Oddly, it doesn't seem to be written in the same form as this contract, but it is definitely a list of tobacco-related issues.

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Q. All right.
A. And it is attached.
Q. And it says "STATE LEGISLATIVE ISSUES" at the top; right?
A. Yes.
Q. The first is "Tobacco Taxes." Right?
A. Uh-huh.
THE REPORTER: Your answer?
THE WITNESS: Yes, sir.
Q. Among the others is "Smoker/Nonsmoker Insurance Rates;" right?
A. That appears on the list.
Q. And you would agree that along with tobacco taxes, smoker and nonsmoker insurance rates was an issue that was of considerable interest to The Tobacco Institute.
MR. FLYNN: Again I object to your phrase "considerable" as vague and ambiguous, but --
A. I would not agree with that statement. This is an odd -- this is an odd list. I don't --
It does not seem to refer specifically to Minnesota, in my opinion.
Q. Sir, is it your testimony that smoker/nonsmoker insurance rates were not an interest item for The Tobacco Institute?

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A. Not to my knowledge in Minnesota. Definitely not.
Q. So if there is information to the contrary, you're simply not aware of it; right?
A. If there is information to the contrary, I'm not aware of it.
Q. Now one of the issues that's listed here is "Tobacco Sales & Vending;" right?
A. Yes.
Q. That has been an interest item for The Tobacco Institute and continues to be to this day; right?
A. The sales part certainly has. I believe the vending issue was finally resolved last session. I don't think that's of interest to anybody any more.
Q. All right. Now sir, --
A. To the best of my knowledge.
Q. -- have you ever seen this document before, the list at the end?
A. I do not specifically recall seeing this list at the end before. I do believe that I glanced at the previous three pages, though, yesterday, but I have not -- I don't recall this list.
Q. You would agree it's consecutively Bates numbered with the rest of the document; wouldn't you?
A. Yes.

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Q. You have no reason to believe it was not attached to the document when it was sent to Mr. Thomas Briant; do you?

A. No, I have no reason --

Could I have just a very short break?

Q. Certainly.

THE REPORTER: Off the record, please.

(Recess taken.)

MR. FLYNN: For the record, I gather the fourth page of this exhibit, number 218496, was not on the list of predesignated exhibits that plaintiff intended to disclose -- is intended to be used with the witness.

MS. WIVELL: Well for the record, any -- my copy shows four pages. Any mistake that was made was absolutely inadvertent. And my -- all of my copies are a four-page document, so --

MR. FLYNN: I'm not really arguing with you.

MS. WIVELL: Yeah.

MR. FLYNN: I'm just saying that's why he didn't see that page --

MS. WIVELL: Okay.

THE WITNESS: Yeah.

MR. FLYNN: -- because it wasn't part of

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what --

MS. WIVELL: All right.

MR. FLYNN: -- you listed. That's all.

BY MS. WIVELL:

Q. Okay. Well going back, sir, to the last page, have you ever seen this type of document or list over the years that set forth a list of state legislative issues?

A. I don't recall seeing this specific one. I've certainly seen lists of issues for many of my clients.

Q. All right. Well --

But for The Tobacco Institute, have you ever seen similar lists of state legislative issues --

A. I'm sure over the years I have seen lists of legislative issues.

Q. They were similar to this?

A. It would be impossible to recall what specific items they contained, but I assume that some of these may have been. But the direct answer to your question is yes, I'm sure that I've seen lists of tobacco-related issues.

Q. Now sir, for how long has The Tobacco Institute been contributing money to the Minnesota Candy and Tobacco Association?

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MR. FLYNN: I object to the frame of the question. This is not a contribution of money, this is a purchase of services as I read the contract. It's an argumentative statement as you've phrased it.

A. I don't know the answer to that question. I have no idea how long.

Q. Do they contribute today?

MR. FLYNN: Again I object to your use of the word "contribute."

MS. WIVELL: Counsel, I'm reading from the document.

MR. FLYNN: Then read the document. I read it as a contract where they're buying some --

They use the word "contribution." Well all right. Go ahead. Do they contribute -- let it be. Do they --

A. To my understanding, we do.

Q. Now the Minnesota Candy and Tobacco Association today has a different name.

A. I believe it does, yes. And I don't know exactly what it is.

Q. All right. This association that you can't remember the name of is a successor to the Minnesota Candy and Tobacco Association.

A. That would be my understanding.

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Q. So The Tobacco Institute still, as of this year, contributes money to this successor organization; right?

A. I'm sure that we support the wholesale organization that's in place today.

Q. And as a matter of fact, they are considered one of the members of the tobacco family; aren't they?

A. It depends on who you're talking to. I don't consider them a part of the --

I mean "the tobacco family" is not a term of any precise definition. I don't consider them a part of the tobacco family, whatever that is.

Q. Well have you ever used the phrase "the tobacco family?"

A. Uh-huh. Yes, I have.

Q. What do --

What do you refer to when you're using it?

A. In most cases if I were to use that phrase, it would be referring to probably the Institute and member companies. I think most -- most commonly that would be --

Q. Now in addition to the Minnesota Candy and Tobacco Association and its successor, there are other trade associations that The Tobacco Institute contributes money to here in the state of Minnesota;

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isn't that right?
A. That's correct.
Q. What other associations does The Tobacco Institute contribute money to?
A. Oh, gosh. To the best of my knowledge we support the Minnesota Grocers Association, the Minnesota Retail Association, and possibly, although I'm not sure, the Minnesota Petroleum Marketers.
Q. How about the Minnesota Wholesale Marketers Association?
A. I think that's the successor group to this group.
Q. Okay.
A. I believe we have solved that problem.
Q. All right.
Sir, showing you what's previously been marked as Plaintiffs' Exhibit 3144, this is a letter dated 1995 to -- regarding 1996 funding requests for the Minnesota Wholesale Marketers Association. Is this the organization the -- that was the successor?
A. I believe it is.
Q. Now this document refers to a contribution of $45,000 in funding from The Tobacco Institute.
MR. FLYNN: Again I object. It speaks for itself. But --

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Q. Right?
A. I -- again I need -- I have not read this completely.
Could you ask me the question again, please?
Q. Certainly. This document refers to a contribution of $45,000 in funding from The Tobacco Institute.
A. That's not what I read. I don't believe that's accurate.
Q. Well it says, "The Association is requesting an aggregate of $45,000 in funding from The Tobacco Institute and the tobacco manufacturers in order to allow the association to continue its direct involvement on tobacco industry issues;" right?
A. That's an accurate reading of that paragraph.
Q. Okay. So does --
How much money does The Tobacco Institute give to the Minnesota Wholesale Marketers Association?
A. Off the top of my head, I don't know the answer to that question. Again, that's something that would require some research to find out. But I -- I don't recall off the top of my head.
Q. All right. Do you understand that between The Tobacco Institute and the other tobacco manufacturer member companies of the Institute, it gave last year

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$45,000 to the Minnesota Wholesale Marketers?
A. I don't know that. I can see in front of me that that's what they asked for. I don't know what was actually contributed.
Q. Do they usually get what they ask for?
A. It's not been my experience.
Q. All right. Now they have con -- they have a -- I'm sorry, strike that.
The last page of Exhibit 3144 is a report from the Minnesota Wholesale Marketers Association about their activities in cooperation on efforts related to tobacco; right?
MR. FLYNN: Well objection, it speaks -- speaks for itself. In fact it's in the future tense; you got it in the past tense the way you framed the question. It says below is a list of contemplated efforts.
Q. Well let me rephrase the question and direct your attention to the second page of the exhibit. There is a list of what the association had done in the year 1995 involved in tobacco-related efforts and issues; correct?
A. That's what the document says.
Q. And among the things that the Wholesale Marketers Association had been involved with was

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attending tobacco industry lobbying meetings to formulate strategies and receive lobbying assignments; right?

A. That's what point number one says.

Q. All right. Are there tobacco industry meetings of the various cooperative groups that get together and talk about strategies in the state of Minnesota?

A. Any client that I've ever worked for that has any type of association with other interests has -- you have meetings where you talk about things like strategy and who's going to do what and how is it going to get done and --

Yeah, there are meetings.

Q. All right. You've participated in them?

A. I have.

Q. Now it says here they receive lobbying assignments. Who do they receive the assignments from?

A. Depends who's running the meeting.

Q. Well who usually is the head of these meetings on behalf of the tobacco industry in the state of Minnesota?

A. That role changes depending what year it is, who was working on -- you know, who -- which specific lobbyists are on the issue. Without a specific

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example of a meeting, it would be difficult to go back and say --

These are not formal meetings, I mean generally. It's people with the same goals talking about how you accomplish those goals.

Q. All right.

A. It's not quite the formal thing that I -- I sense you're thinking it is.

Q. Well typically, for example, during the '80s, was Tom Kelm pretty much at the helm of the tobacco lobbying efforts in the state of Minnesota?

A. I don't think there's any question that he was not at every meeting. I think he certainly was looked to as someone with perhaps the most experience.

Q. All right. Well keep in mind that probably no one can be at every meeting. You would agree he was the person who was pretty much at the helm of the lobbying efforts in the state of Minnesota on behalf of the tobacco industry in the '80s; right?

MR. FLYNN: Is that true without the argument, just that's the question.

A. I would answer yes to that question.

Q. Okay. So when it came to giving out lobbying assignments, it was pretty much during the '80s Kelm

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and his colleagues at North State who were calling the shots; isn't that true?

MR. FLYNN: That's a whole --

It's two questions, giving out lobbying assignments and whatever you mean by "calling the shots." So as phrased it's vague, ambiguous, and it's a dual question.

A. I have trouble with the phrase "giving out lobbying assignments." Again, as in any -- any other client area that I've worked on, and I've worked on many besides tobacco over the years, you -- you want a situation where the lobbyists involved with -- the people involved, they're talking to people that they want to talk with, it's not like -- I don't recall many situations where anybody sits down or stands up in a room and says you talk to this one, you talk to that one. It's -- it's a much more cooperative system than that generally. I think to be effective it has to be a much more of a cooperative system than that.

Q. All right. And among the groups that The Tobacco Institute has cooperated with, including the Minnesota Wholesale Marketers, were these others that you mentioned, the retail group and the petroleum marketers; is that right?

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A. They've had --

They've had varying levels of participation through the years. It depends what the issue is. I mean there's --

MR. FLYNN: You've answered it.

A. It depends what the issue is.

Q. The Tobacco Institute has given each one of those associations money on an annual basis; hasn't it?

A. I do not know if there have been annual contributions to each and every one of those. I --

It is my recollection that the groups that I listed have at some point received support from the Institute. I did not say that it was an annual occurrence.

Q. Has The Tobacco Institute ever donated to charities or causes known to be favored by a legislative leader?

A. Not to my knowledge.

Q. How about Philip Morris or RJR or Brown & Williamson, has any of them ever donated to charities or causes known to be favored by legislative leaders?

A. I'm aware that charitable contributions have been made. I don't know what the status is with legislators. I don't understand that.

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They have a -- I don't know what it's called, a foundation or --

I mean Philip Morris does do charitable giving. I don't know what connection it has or doesn't have to a legislator.

Q. All right. How about with the Governor of the state of Minnesota, has Philip Morris or RJR, Brown & Williamson, to your knowledge, contributed to charitable institutions favored by the Governor?

MR. LEMLEY: Objection. He's not here as a representative of any of those companies, he's here as a TI representative.

MR. FLYNN: Again if -- if --

A. I don't know the answer to that question.

Q. How about North State Advisors, has -- or their PAC, has any of -- anyone from there donated to charities or causes known for favored by either a legislative leader or the Governor?

A. I don't know the answer to that question either.

Q. All right.

Now sir, I would like to turn to the issue of legislation, and specifically within the Minnesota legislature. Are you aware that the companies you mentioned, the grocers, the retailers, the petroleum marketers, they're considered allies of The Tobacco

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Institute in the state of Minnesota; right?

MR. FLYNN: I object, it's vague and ambiguous what the word means and by whom. But if you can address it --

A. There are -- I think -- I think the -- the most direct way to answer that is there are issues that those groups are concerned about that relate to tobacco. Their -- their concern is of their own organization though. It's -- I mean those people tend to be involved either in the wholesaling or the retailing of the product that my trade group represents, and they do have some interest in those issues, very natural interests.

Q. Well, and they're considered allies of The Tobacco Institute.

A. If it's an issue that they have an interest in.

Q. And they actually have lobbied on issues relating to tobacco that were of interest to The Tobacco Institute; right?

A. They've lobbied on issues -- on tobacco issues that are of interest to them, and in many cases those are also going to be of interest to The Tobacco Institute. Their participation is based on their interest in the issue.

Q. Is it based at all on the contributions that The

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Tobacco Institute gives to them on a basis -- on a regular basis?

A. I would severely doubt that. Those organizations are in business to represent their membership.

MR. FLYNN: You've answered.

(Discussion off the stenographic record.)

(Plaintiffs' Exhibit 1424 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1424, this is a document that begins with Bates number TIMN457576; right?

A. Correct.

Q. And it's entitled "ACTION-TRAC" and dated September 24th, 1990.

A. Correct.

Q. What's an ACTION-TRAC?

A. It looks --

I've never used an ACTION-TRAC. When I look at this, though, it looks like a method of tracking issues.

Q. And according to this document, the issue being tracked is the cigarette excise tax in Minnesota; right?

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A. That's what the document says.
Q. Now if we turn to the second page, there is a list of The Tobacco Institute's allies in what's called the Minnesota plan; right?
A. There are a list of organizations here, yes.
Q. Under the heading "COALITION ALLIES;" right?
A. With a question mark.
Q. It goes on to say, "The ongoing 'Minnesota Plan' has enabled the industry to improve its capability" -- I'm -- I'm sorry, let me begin again.

And it goes on to say, "The ongoing 'Minnesota Plan' has enabled the industry to improve its capability traditional allies and expand our contacts with new allies;" right?
A. That's what the memo says.
Q. And it -- under the list of allies that Minnesota -- I'm sorry. Strike that.

Under the list of allies in Minnesota that were fighting the excise tax were the Minnesota Grocers Association; right?
A. That's what the document says.
Q. And also on the list of allies was the Minnesota Retail Merchants Association.
A. That's what the document --

They're there.

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Q. All right. And it also list the Minnesota Beverage License Association.

A. That group is listed.

Q. All right. That is not a group that you gave us on your list before; was it, sir?

A. No, ma'am.

Q. All right. Also listed the Minnesota Association of Candy and Tobacco Distributors.

A. They're there.

Q. All right. And also listed is Northwest Tobacco and Candy Distributors; right?

A. That group is on the list.

Q. Yes. And that wasn't on your list before; was it, sir?

A. They are no longer in existence.

Q. All right. And it says here underneath, quote, "Contributions of between 1,000 to 20,000 are made annually to the above," doesn't it?

A. That's what the document says.

Q. All right. Sir, do you have any information that would dispute what's written in this Tobacco Institute document, Exhibit 1424?

A. I would assume that as of the date that it was written, those statements are accurate.

Q. And sir --

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A. I have no reason to think that they're not.
Q. All right. Are there any other groups that The Tobacco Institute has annually contributed to in the state of Minnesota that aren't listed here or that you haven't told us about?
A. Annually.
Not to my knowledge. I can't think of any other groups that we annually --
We don't annually support the groups on this list. I mean if you're talking currently. I don't -- I'm not aware of any other ones.
Q. For how long had The Tobacco Institute provided contributions on an annual basis of between one and 20 thousand dollars to the people on the list?
MR. FLYNN: If you know.
A. I do not know.
Q. Sir, you -- you mentioned --
You seemed to take the word "annually" in that question. Let me take that out. Are there other trade associations in Minnesota that The Tobacco Institute has contributed to?
A. We get funding requests -- I'm trying to remember. I cannot recall any other specific organizations.
Q. Now sir, has The Tobacco Institute -- I'm sorry,

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strike that.

The Tobacco Institute has retained Tom Briant; hasn't he -- hasn't it?

A. I believe that's true.

Q. All right. And they have retained Tom Briant on a number of different projects; right?

A. I am aware of one contract existing --

Q. What contract is that?

A. -- with Tom Briant.

I think we saw an earlier version of it earlier in this deposition. It's a -- there was an agreement between Mr. Briant and -- and the association -- or and the Institute.

Q. Well does The Tobacco Institute fund Tom Briant to work --

MR. FLYNN: Is this it (document displayed to the witness)?

THE WITNESS: Similar to this.

Q. -- on the Coalition for Responsible Retailers?

A. Tom Briant works on that coalition. Without looking at -- at a specific agreement, I don't know if we fund him for that. I -- you know, I know he does work on that coalition.

Q. Does The Tobacco Institute fund his work on the Automatic Merchandising Council?

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A. That I do not know.
Q. Does The Tobacco Institute fund Tom Briant's work on the Vending Machine Council or Association?
A. I do not know that -- the answer to that question either.
Q. Would these groups or --
Have these groups been considered allies of The Tobacco Institute?
A. All the groups that you mentioned were actual -- were groups at one point. I'm not sure if they are all active today. I don't know if there's a vending group today or not.
Q. Does The Tobacco Institute help set up groups, create groups so that they can go to the legislature and lobby?
A. We fund groups that are interested in issues. I mean we -- we support groups like that. Some of them lobby, some of them don't. I mean --
Q. Give me some examples that you support.
A. The Minnesota Grocers Association, we get -- you know, we often get a -- get a funding request from a group like that, another trade association, some of the groups that are listed in -- in this document, and make a judgment about whether we're going to do financial support to that group.

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Q. Well is the Tobacco Institute a dues-paying member of the Grocers Association?
A. I don't know if our contributions are dues. I would assume that we would be. If we contribute to them, I would assume that we're members, but that's something that I'm not personally aware of. I don't --
We're not grocers.
MR. FLYNN: You don't know.
THE WITNESS: I don't know.
MS. WIVELL: Mr. Flynn, all morning you have been counseling the witness, interrupting him, and I'm going to object. I think it's a flagrant violation of the court's order. He wasn't through and you told him to stop, and I think it's outrageous.
MR. FLYNN: Stop pointing --
A. Well the fact is I don't know --
MR. FLYNN: Wait a second. Stop pointing your finger at me. I'll defend the witness. You do your job, I'll do mine.
MS. WIVELL: Well I would like you to do yours.
MR. FLYNN: And speak softly, please.
MS. WIVELL: And according to the court

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order, sir --

MR. FLYNN: Please speak softly.

MS. WIVELL: And the record will reflect that I'm speaking in the voice I've been speaking in.

MR. FLYNN: You're speaking in a --

MS. WIVELL: Thank goodness we have a videotape so that your --

MR. FLYNN: But it only looks at me, it doesn't look at you. That's the problem. You speak very stridently, you get very uptight very quickly.

MS. WIVELL: Well I'm sorry, Mr. Flynn, but I do object to your violation of the court's order.

BY MS. WIVELL:

Q. Now sir, are you a dues-paying member, and by "you" I mean The Tobacco Institute, of the Retail Merchants Group?

A. I know that we've made contributions to that group. I don't know what our membership status is.

Q. Are you a dues-paying member of the Petroleum Marketers?

A. I don't know the answer to that question.

Q. All right. What criteria does The Tobacco Institute use in deciding whether to contribute to one of these groups?

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A. I don't know that there is a set formula or -- or criteria. I would suspect that they -- there would have to be a reasonable expectation that the groups are interested in the same types of issues that we are.

Q. Well does The Tobacco Institute expect to get something back for its money?

A. I don't think you can put it that way any more than you expect to get something back from a trial lawyers group that you might contribute to. I don't -- you know, I don't understand --

MR. FLYNN: You've answered it.

MS. WIVELL: I again object to counsel's interrupting the witness.

Q. Sir, these aren't charitable contributions; are they?

A. Not --

I don't think so. I don't believe so.

Q. Tobacco Institute doesn't write off these contributions as charitable contributions when it reports to the IRS; does it?

A. I don't know what the tax status of these contributions are. I have no knowledge of that.

Q. And it's your testimony to the ladies and gentlemen of the jury that The Tobacco Institute

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doesn't expect anything for the money it gives to these groups?

MR. FLYNN: That's not what he said. It's argumentative. He said you can't phrase it like that.

A. I mean how -- how -- do we give --

Are you saying do we give them a check and say "And this is what you have to do for us?" The answer to that question is no. I mean does Blue Cross Blue Shield expect to get anything back from Smoke Free 2000 when they make contributions to them? I would suspect that answer is no.

Q. Well sir, let me ask it this way: You're giving money to these organizations because you expect cooperation; don't you?

A. Every group that we've discussed here has historically an interest in a tobacco-related issue. These are people that make their living either selling this product on the wholesale level or selling this product on the retail level, generally, or the product is used in their establishments. It seems pretty logical to support organizations like that.

Q. Well sir, one of the things that The Tobacco Institute expects in return is for these

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organizations to be out front on issues; doesn't it?
A. I have never found that to be the case.
Q. Now sir, what do you understand the phrase "out front on an issue" to mean?
A. I would assume -- in my --
In my mind, I don't know how you mean it. I don't know. I mean you want to know what I think of the phrase "out front?"
Q. Yes, sir.
A. I would suspect it means having membership engaged in an issue, having perhaps lobbyists engaged on an issue. In the general sense I would think that's what you mean by that phrase.
Q. Well, sir, that's what you mean; isn't it?
A. You asked me what I thought it meant, and I think I told you what I thought it meant.
Q. Okay. And as a matter of fact, isn't one of the reasons that The Tobacco Institute gives money to these various organizations, so they will have lobbyists who are engaged on issues that are of common interest with The Tobacco Institute?
A. I don't know that that's the case.
Q. Well sir, isn't it a fact that one of the reasons The Tobacco Institute gives money to these organizations is because it wants some of these

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organizations to be the spokesperson on various issues so that it can be in the background?
A. I do not know that that is the case.
Q. Well sir, hasn't Tom Kelm said that on some issues it's better for others to be leading the charge so that we can be in the background?
A. There are issues where groups other than The Tobacco Institute are more directly affected by a legislative proposal, but I don't see a direct connection between that and any support that might be given.
Q. Well sir, isn't it true that sometimes part of the tobacco strategy is to put others -- other organizations or trade associations out front on an issue as the issue spokesperson so that the tobacco industry can be quietly in the background?
A. I do not know that to be the case. There are other issues that certainly -- other groups that are certainly involved in tobacco issues, but they're there for their own purposes.
Q. Well sir, let me show you a document written by your father-in-law.
A. Mr. Kelm?
Q. Yes, sir.
(Plaintiffs' Exhibit 1425 was marked

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for identification.)

MR. FYNN: For the record, we'll object to counsel's reference to that familial connection. Ask that question be rephrased. That's totally inappropriate.

Q. Sir, showing you --

MR. FLYNN: Wait, he's not answering --

All right. Well ask another question because he's -- he's not answering that question.

Q. Showing you what's been marked as Plaintiffs' Exhibit 1425, this is a document Bates numbered TIMN0240708; correct?

A. Right.

Q. And it's to Ray Oliverio of The Tobacco Institute, written by Tom Kelm; right?

A. That's what the memo says.

Q. All right. And if we look at the third paragraph of the document it says, "The issue is a close one in the Senate -- less so in the House where there is a more conservative feeling about bills of this kind. We have had many discussions with the restaurant and tobacco lobby, and they have been leading the charge. On this issue their standing is much higher than that of anyone directly connected with the tobacco industry;" correct?

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MR. FLYNN: You misread it. You misread it. You said "restaurant and tobacco lobby." That's not what the document says.

Q. All right. Well let me rephrase the question.

If we look at the third paragraph of the document, it says, "The issue is a close one in the Senate -- less so in the House where there is a more conservative feeling about bills of this kind. We have had many discussions with the restaurant and hospitality lobby, and they have been leading the charge. On this issue their standing is much higher than that of anyone directly connected with the tobacco industry." Right?

A. That's what the letter says.

Q. Now sir, isn't it a fact that on various issues that The Tobacco Institute has lobbied on here in the state of Minnesota, it has deliberately placed others leading the charge so that the tobacco industry could stay in the background?

MR. FLYNN: That just --

That doesn't have anything to do with this document. Just answer the question. But the document doesn't address that.

A. We don't --

I don't know that to be the case. We don't

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place people anywhere. There are other groups that act in their own best interests.

Q. Well as part of the strategy meetings, isn't it true that it's often determined among the lobbyists who meet at those meetings, who will take the forward position and be out front on an issue?

A. Those -- those things are discussed. It's not a situation where you're making someone do something.

Q. Well --

A. So it's a fairly logical situation.

Q. And isn't it true that Mr. Kelm asked people from time to time to be out front on issues so that the tobacco industry could be in the background?

A. I don't know that he ever asked anybody that question that way.

Q. You just don't know.

A. I have no knowledge of that.

Q. You don't know one way or the other; do you, sir?

A. I don't know that Mr. Kelm ever asked that question of anybody.

Q. All right. Now why would the standing of the restaurant and hospitality lobby be higher than that associated with the tobacco industry?

A. Could you give me two minutes to read the

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document, and then I'll --

Q. Well it has nothing to do with the document, sir.

MR. FLYNN: Well you're assuming then that there's a stated -- that there is a higher standing. First have the witness establish the predicate -- the pecking order if you want him to ignore the document. It assumes a state of facts not established.

Q. Well sir, it says in the last sentence--

MR. FLYNN: Well you want him to read the the document now?

MS. WIVELL: Well I'll read the document.

MR. FLYNN: Well you tell him not to read it, it has nothing to do with the document, now you're going to read him the document again.

MS. WIVELL: Well counsel, I'm trying to establish the predicate that you want me to inquire -- or to --

MR. FLYNN: Go ahead. Be fair with the witness. Don't take it -- use the document, then not use it.

MS. WIVELL: Mr. --

MR. FLYNN: Go ahead.

BY MS. WIVELL:

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Q. Mr. Kelm says, "On this issue their standing is much higher than that of anyone directly connected with the tobacco industry." Right?

MR. FLYNN: Now take the time to read the document, as the witness asked for three questions ago, then answer her question.

A. That's what Mr. Kelm says in this letter. And my assumption is that's because they're discussing in 1979 a bill that would lift restaurant licenses. I would say that would give the hospitality industry a direct concern in that issue.

Q. And why would their standing be higher on this issue --

A. Maybe --

Q. -- than that --

Excuse me. May I finish?

A. Yes, you may.

Q. Thank you.

Why would their standing be higher on that issue than that associated with the tobacco industry?

A. Maybe because it's their businesses that would be put out of business.

Q. All right. We're talking here, by the way, about enforcement of the Minnesota Clean Indoor Air Act; right?

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A. I don't know --

MR. FLYNN: It speaks for itself.

A. -- what that's about. I don't know what House File 84 is.

Q. Now sir, you would agree that The Tobacco Institute and other members of the tobacco family in Minnesota have worked hard to keep bills from coming out of committee; right? Bills related to tobacco.

A. We have taken strong positions, pro and con, on tobacco-related legislation.

Q. Let me --

A. Undoubtedly.

Q. Let me ask you this: When was the first time tobacco lobbyists started lobbying in the state of Minnesota?

A. I have no idea.

Q. Well you know it's well back before the '60s; right?

A. I have no knowledge of that at all.

MS. WIVELL: I would like at a break for The Tobacco Institute to find out when The Tobacco Institute's lobbyists first appeared here in the state of Minnesota and started lobbying. I think that that's an appropriate subject that was duly noted by the notice, and I have a right to a witness

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who's knowledgeable on that subject.

MR. FLYNN: Well we ain't doing it this morning, so you do what you want. The witness is here. You can ask whatever you want.

MS. WIVELL: Well he's remarkably unprepared in a lot of areas, and I have a right to a witness who's prepared.

MR. FLYNN: Well that -- I guess if you want to bring it to the court's attention, you can do that. You have your options. The option now is to continue with your questioning.

(Plaintiffs' Exhibit 1426 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1426, this is a Tobacco Institute document that begins with the Bates number 500032298; correct?

A. I can't find the Bates number on my copy.

MR. FLYNN: It's over here. You're right. Go ahead. That's what it says.

A. Correct.

Q. All right. And this is a document that discusses lobbying that was going on in 1965 in a number of states, including the state of Minnesota;

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right?

MR. FLYNN: Again it speaks for itself. I don't know that the word "lobbying" is in here. It says it's a progress report.

A. I don't see the word "lobbying."

Q. All right. Well you would agree this is a, quote, progress report, then, on bills that were introduced in the state of Minnesota; right?

A. It mentions Minnesota in the document.

Q. And it mentions that The Tobacco Institute was, quote, "diligently working toward keeping these bills from getting out of committee;" correct?

A. That's what the document says.

Q. All right. And you have no information that would contradict the fact that The Tobacco Institute was lobbying against or trying to keep the bills that are mentioned in this document from getting out of committee; right?

A. I have no other information on that.

Q. All right. Now what --

If we turn to the third page of the document, we see under the heading "Minnesota" that among the bills that The Tobacco Institute was working diligently toward keeping from getting out of committee was one relating to penalties for

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permitting tobacco use -- tobacco to be used by people under the age of 18; right?

MR. FLYNN: I'm sorry, do you have the --

THE WITNESS: She's here.

MR. FLYNN: Okay. The first paragraph. Okay.

A. That's what the document says.

Q. All right. And you understand, sir, that in 1965 The Tobacco Institute fought a law in the state of Minnesota that would penalize tobacco use by persons under the age of 18.

MR. FLYNN: Again I object --

A. I don't know what 1965 House File 97 did or didn't do. I have no idea.

Q. You have no information that would contradict what's written here in this Tobacco Institute document; do you, sir?

A. I don't know what House File 97 was in 1965. I don't know what that bill said.

Q. Well that wasn't my question, sir.

You don't have any information as you sit here that would contradict the fact -- the facts that are stated regarding House File 97 in this document; do you?

A. I don't have any information on House File 97 in

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1965, on one side of it or the other.

Q. All right. And so if The Tobacco Institute lobbyist who wrote this document said that they were fighting to keep out of committee a bill that would permit penalties for tobacco use under the age -- by persons under the age of 18, you're just unfamiliar with that; right?

MR. FLYNN: I object to that --

I object to your interpretation of the document because it doesn't say one way or the other, for or against what this bill has to do with. It speaks for itself.

A. It doesn't say --

Was it reducing penalties to -- I mean there is no information here on what House File 97 was.

Q. Now sir, you looked at this document before the deposition today; right?

A. No, ma'am.

Q. Nobody showed you this document despite the fact that I had designated it?

A. I did not --

I have not seen this document before today.

Q. Now one of the things that we do know that was being -- that -- I'm sorry, strike that.

We also know that The Tobacco Institute was

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diligently working toward keeping a bill, Senate File 350, from getting out of committee; right?

A. I don't know that.

Q. Well sir, we know that from the very first page of the document; don't we? It says, "MINNESOTA - The five bills introduced in Minnesota are now pending before Committees. We, of course, are diligently working toward keeping these bills from getting out of Committees."

A. That's what --

Q. Right?

A. -- the first page of the document says.

Q. And the bills are referred to on the third page of the document and include Senate File 350; right?

A. There are actually six bills listed in that section of the document, and I have -- given that this is a 1965 document, I have no idea what five bills the first-page comment refers to.

Q. Well sir, actually two of them are the same bill; one was the Senate file number and one was the House file number; right?

MR. FLYNN: It speaks for itself. You can read it as well as he can.

How do you know Senate 301 is the same as H397?

MS. WIVELL: It says so, Mr. Flynn.

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A. That's what the document says.
Q. Yeah.
Now sir, Senate File 350 prohibited the depiction of any person using a cigarette in connection with advertising of cigarettes in the state; right?
A. That's what the document says.
Q. Now do you think that Frank Welch would write something about legislation in the state of Minnesota to The Tobacco Institute that wasn't true?
A. I don't know Frank Welch. I -- I don't know the answer to that question.
Q. So as you sit here today, you just don't know one way or the other; do you?
A. I don't know the answer to the question that you ask.
Q. Now sir, isn't it true that between 1975 and 1984, most of the anti-tobacco measures that were introduced in the legislature of the state of Minnesota were dealt with by Tobacco Institute lobbyists in committee or were thwarted by the direct efforts of lobbying that they did?
MR. FLYNN: Boy, is that a --
A. Did we --
Are you asking me did we work on tobacco-related

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bills during those years? Yes, we did. What happened to them? I have -- I don't know that.

MR. FLYNN: You answered.

THE WITNESS: I'm getting ready for another break if you people don't mind.

MS. WIVELL: All right, then let's take a break.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Exhibit 1427, this is a document that begins with the Bates number TIMN283332; right?

A. Correct.

Q. And it's a Minnesota legislative action plan that was put together by members of the State Activities Division of The Tobacco Institute; right?

A. That's what it says.

Q. All right. And if you turn to the page that ends with Bates number 336 --

MR. FLYNN: Could I get a copy of this, if you brought one with you?

MS. WIVELL: Oh, I'm sorry.

(Document handed to Mr. Flynn.)

MR. FLYNN: Thank you.

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Q. In the second paragraph on that page, it says, "The anti-tobacco agenda was somewhat subdued after the passage of the Clean Indoor Air Act. From 1975 to 1984 most anti-tobacco measures were dealt with in committee or were thwarted by direct lobbying." Correct?
A. That's what the document says.
Q. All right. Sir, and you would agree that from 1975 to 1984 The Tobacco Institute lobbyists were able to deal with most of what they considered to be anti-tobacco measures that were introduced in the Minnesota legislature.
MR. FLYNN: Objection, there's no foundation how this witness would know that. But if you do, tell her.
A. I -- I do not know that.
Q. All right.
A. Um --
Q. Do you have any information that contradicts or in any other way disproves what is stated in this 1987 Minnesota legislative action plan with regard to the activities between 1975 to 1984?
A. I --
My assumption is that's the opinion of whoever wrote this document.

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Q. All right. And whoever wrote this document on behalf of the tobacco industry, you wouldn't have any evidence to the contrary; would you?

A. Not that I can think of.

Q. So sir, would it be fair to say that from 1975 to 1984, if there were bills introduced, that tobacco lobbyists managed to get them either killed or thwarted in some way?

MR. FLYNN: Again I object, there's no foundation. The document speaks for itself. This witness has no foundation.

MS. WIVELL: Actually, Mr. Flynn, this witness is The Tobacco Institute, --

MR. FLYNN: He's as good --

MS. WIVELL: -- so I'm asking him.

MR. FLYNN: He's as good as we can get, but he wasn't there from '75 to '84. By definition he doesn't have the predicate or foundation to answer the question with his own knowledge. The document says what it says. You've established.

If you can answer it of your own knowledge--

A. I mean it's --

That's what this document says.

Q. And as a matter of fact, it was The Tobacco Institute's purpose to try and defeat what they

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considered to be anti-smoking or anti-tobacco bills in the Minnesota legislature; isn't that right?

A. My understanding is we had interests -- you know, certain interests in bills that were introduced dealing with tobacco. The legislature, though, makes a decision on what passes and what doesn't.

Q. Well it doesn't say that the legislature thwarted the bills, it says that they were thwarted by direct lobbying; doesn't it, sir?

A. That's what the document says.

Q. In other words, The Tobacco Institute took credit for killing bills introduced in the legislature of the state of Minnesota from 1975 to 1984 that it thought were anti-tobacco measures; right?

MR. FLYNN: It's just argumentative. It speaks for itself. It doesn't say that. If the witness --

A. We have the same document in front of each other. I mean --

Q. And it takes credit for killing all the bills that were, quote, unquote, anti-tobacco from 1975 to 1984; doesn't it, sir?

MR. FLYNN: Same thing --

A. It does not say all the bills.

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Q. It says, "From 1975 to 1984 most anti-tobacco measures were dealt with in committee or were thwarted by direct lobbying;" right?
A. That's what the document says. Not all anti-tobacco measures. It says most.
Q. But you would agree that The Tobacco Institute took credit for killing most of them; right?
MR. FLYNN: Again I object, it speaks for itself. You've asked it four times.
A. Whoever wrote this document took -- made this statement that you just read into the record.
Q. And took credit for it; didn't they?
MR. FLYNN: Again it speaks for itself.
A. We've read the statement two or three times.
Q. The answer is yes, they took credit for it; didn't they, sir?
MR. FLYNN: Don't --
He's not going to answer it, all right, because it speaks for itself and he said he doesn't know any more than he does. He's not going to answer the question. It's just repetitive and it's abusive and it's argumentative.
MS. WIVELL: On what grounds are you instructing him not to answer, counsel?
MR. FLYNN: The three I just stated,

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repetitive, abusive and argumentative.

MS. WIVELL: I just wanted to make sure that privilege was not among them.

MR. FLYNN: That's --

MS. WIVELL: That's the only grounds that you can properly instruct the witness not to answer, Mr. Flynn.

MR. FLYNN: If the court thinks this is an inappropriate instruction at this time with this record, we'll obviously deal with it. But I think you're abusing the witness.

MS. WIVELL: Well considering he'll be live in trial, I think till be very interested -- interesting.

Q. Now sir, you understand that in 1950 -- or 1984, the Technical Advisory Committee on Nonsmoking and Health introduced legislation -- or I'm sorry. Strike that.

You understand that in 1984, a coalition was formed with the Minnesota Department of Health; correct?

A. I have no personal experience with the coalition described in this document.

Q. Well you know about it, sir; don't you?

A. I know what this document says about the

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coalition. I have no reason to doubt that it wasn't formed.

Q. And you understand that there was a special advisory committee on non-smoking and health that was established in 1984 by the Minnesota Department of Health; right?

MR. FLYNN: I think she's on a different document. Forget the document. Just try to answer the question, if you know it.

A. I don't have personal knowledge of that. I have no reason to believe it's not the case.

Q. Well you understand that there was an advisory committee that recommended establishing three goals, among them preventing young people from beginning to smoke; right?

A. I don't know when that coalition was established. I --

(Discussion off the stenographic record.)

(Plaintiffs' Exhibit 1428 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as 1428, this is a document Bates numbered TIMN457610; right?

A. Correct.

Q. Now sir, before we turn to this document, you

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would agree that Mr. Kelm would know a whole lot more than you do about the lobbying activities of The Tobacco Institute from 1978 to 1984; right?

A. I really don't know what he knows and what he doesn't know.

Q. All right. But you would agree he knows more than you do personally about The Tobacco Institute's lobbying from that period; right?

A. I can't agree with that statement. I don't know what he knows.

Q. Well he was at least involved in The Tobacco Institute's lobbying efforts during that period; isn't that true?

A. For at least part of that period. I'm not sure when his contract started.

Q. Now sir, turning to Exhibit 1428, this is a memo from Michael Brozek to Michael Kerrigan regarding the Minnesota Technical Advisory Committee on Nonsmoking and Health; right?

A. That's what the memo says.

Q. Well, Mr. Brozek and Mr. Kerrigan were both Tobacco Institute employees; weren't they?

A. I don't know Mr. Kerrigan. I know Mr. Brozek was.

Q. All right. What was his position?

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A. I believe he was a regional vice-president.
Q. The first paragraph of this document refers to the Minnesota Department of Health setting up a Special Advisory Committee on Nonsmoking and Health; doesn't it?
MR. FLYNN: Again it speaks for itself.
A. That's what it says.
Q. And listed there are the advisory committee's recommendations centering on three goals; right?
A. That's what it says.
Q. The first of those goals is preventing young people from beginning to smoke; right?
A. That's on the page.
Q. You have no reason to believe that that wasn't a goal --
A. No.
Q. -- of the advisory committee; right?
A. No, ma'am.
Q. And you were -- would agree that it is clear that The Tobacco Institute knew that one of the goals of the advisory committee was to prevent young people from beginning to smoke.
A. That's what this memo says.
Q. Okay. Now sir, the Tobacco Institute as well as other members of the tobacco industry considered the

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Minnesota Department of Health Special Advisory Committee to be an attack on the industry; didn't it?

A. I don't know that.

Q. You've never seen any documents that say that?

A. I've never seen a document that described it as an attack on the industry.

Q. Well sir, isn't it true that the tobacco industry in a -- let me back off. Strike that.

As a result of the advisory committee's work in 1984, legislation was introduced in the legislature of the state of Minnesota; wasn't it, sir?

A. I don't know that.

Q. You don't know that?

A. No.

MR. FLYNN: I object to your tone. If he doesn't know it, he says he doesn't know it. You -- you then repeat it with this inflection that has no basis except to try to intimidate the witness.

Q. Now sir, you would a degree that after --

A. Are we done with this one?

Q. Yes, sir.

You would agree that as of 1984, it was the view of The Tobacco Institute and some of its member companies that everything must be done to blunt the march of anti-smokers in Minnesota; right?

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A. I don't believe that's an accurate statement, ma'am.
Q. Well who is William Kloepfer, sir?
A. Never met the man. I have no idea who he is.
Q. Well you understand he was a vice-president, a senior vice-president of public relations for The Tobacco Institute?
A. I don't know that.
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 3142, this is a letter from William Kloepfer, who is identified as senior vice-president of public relations for the Tobacco Institute; correct?
A. That's what the document says.
Q. For the record, Exhibit 3142 is Bates numbered 690138577; right?
A. Correct.
MR. FLYNN: December of '84.
Q. And this document is dated December 1984; isn't it, sir?
A. It is.
Q. And it says --
Oh, by the way, it was written to Tom Humber, assistant director of corporate affairs at Brown & Williamson Tobacco Corporation; right?

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A. That's who the letter is addressed to.
Q. And it says in the second paragraph, "As we look forward, one of our tasks is to blunt in every possible way the march of the anti-smokers in Minnesota...;" correct?
MR. FLYNN: You've read a part of the sentence, but okay.
A. That's --
As far as you read it, that's what the document says.
Q. And then it --
And then it goes on to say "where a special movement is underway, using legislation and propoganda to put the state in the information front of the drive for a smoke-free society;" right?
A. That would seem to be Mr. Kloepfer's opinion.
Q. All right. As vice-president of The Tobacco Institute; right?
A. That's their stationery.
Q. It's your stationery; isn't it, sir?
A. This particular piece isn't. It's -- it's the --
It's my employer's stationery.
(Plaintiffs' Exhibit 1429 was marked for identification.)

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BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1429, this is a document that begins with the Bates number 2024263036; right?

A. Correct.

Q. It's dated March 28th, 1985 and is a memo from Michael Brozek to Bill Buckley regarding Minnesota legislative status report; correct?

A. That's what the document says.

Q. Now sir, you've seen this document before; haven't you?

A. I do not recall seeing this document before.

Q. All right. Why don't you take a moment and read it.

A. Thank you.

Thank you.

Q. Exhibit 1429 outlines legislation which had been enacted -- oh, I'm sorry -- which had been introduced in the state of Minnesota as a result of the Minnesota Department of Health initiative that was looked at in a couple of documents ago; right?

MR. FLYNN: Again, it speaks for itself, but --

A. Actually, I don't think all the -- all the legislation here is a result of that.

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Q. But some of the legislation that's mentioned here was a result of that; wasn't it, sir?
A. I did not read in the document that that commission was the source of this specific bill here.
Q. All right. And Exhibit 1429 lists a number of bills which had been introduced in the legislative session in 1985 and the action that was being taken by the tobacco industry on those bills; right?
A. It looks like it's a report on the status at the time the report was written.
Q. Okay. On the bills that are listed there; right?
A. Correct.
Q. Okay. Now among the bills that are listed there is Senate File or SF 38; right?
A. Correct.
Q. And according to Exhibit 1429, SF 38 was a measure that was referred to the Committee on Health and Human Services which would increase state excise tax on cigarettes to 54 cents a pack; right?
A. That's what the document says.
Q. And according to the report from The Tobacco Institute, this money would be earmarked for state medical assistance funds; right?
A. That's what the document says.

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Q. And efforts were being made by The Tobacco Institute lobbyists to kill that bill in committee; right?

A. I have to assume that we would have opposed an excise tax increase. That, I think, would be a safe assumption.

Q. My question was a little --

My question didn't have to do with that at all. My -- my question was: And the tobacco industry lobbyists were trying to kill that bill in committee; weren't they?

MR. FLYNN: Again, the document speaks for itself.

A. Because it's listed here, it's a bill that -- that we were concerned about, as we would about any cigarette tax increase.

Q. Well at the bottom of the page it says "ACTION/NOTES," and it says,, in part, "Efforts are continuing to kill this bill in committee." Right?

A. That's what the document says.

Q. And sir, the tobacco industry wanted that bill, SF 38, killed in committee; didn't it?

MR. FLYNN: Again it speaks for itself, but --

A. We have the document in front of us.

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Q. Well, and the -- the document indicates that The Tobacco Institute lobbyists wanted to kill that bill; isn't it?

MR. FLYNN: Again it speaks for itself. But you can read it to her.

A. It --

My knowledge would be that it advocated an increase in the cigarette excise tax, and my knowledge would also -- I would be allowed to infer from that that The Tobacco Institute would oppose a cigarette excise tax increase.

Q. Why?

A. Excise taxes are the most regressive form of taxes that this state employs.

Q. Well sir, was the Tobacco Institute in favor of funds from any kind of a tax increase on cigarettes to be marked for revenue for the state medical assistance fund?

MR. FLYNN: In '85. If you know that, that's --

A. I don't know in 1985 what their attitude was about that program. I'm not familiar with that program.

Q. All right. Well what efforts specifically did the tobacco industry make to kill the bill SF 38?

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A. Specifically on SF 38 introduced in 1985?
Q. Yes, sir.
A. I would not know what specific things were done.
Q. Would --
Would Tom Kelm be in a better position to know the answer to that question?
A. If he was involved in that bill, which I also don't know.
Q. Sir, you've been unable to answer a number of my questions today or verify the truthfulness of statements made in various documents written by Tobacco Institute lawyers. Who in your opinion would be more knowledgeable about The Tobacco Institute's lobbying activities in Minnesota from 1978 to the present?
MR. FLYNN: Wait. I object, and just tell the witness ignore the predicate. The question I guess is --
Read the question back if you can do it without the statement.
(Record read by the court reporter.)
MR. FLYNN: If you know the answer -- without --
Ignore what she said. Just if you know somebody who would fill that bill, tell her.

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A. I really can't give you an answer to that question. I --

It depends what your questions are, what you want to know.

Q. Well on the issues that we've looked at so far that you haven't been able to give us any information about, who would be more knowledgeable?

MR. FLYNN: Again it's -- it's argumentative. What issue do you want him to address, counsel, and then he can tell you if he knows. You got this generic collection that I don't know what you're referring to.

A. Could you restate the question for me, please?

Q. Certainly, sir.

On the issues that we've looked at, including the efforts that were made to fight House File -- or Senate File 38, who would be more knowledgeable and be able to give us information that you can't?

A. I don't know who worked on Senate File 38 in 1985.

Q. Are there records of that?

A. Not that I'm aware of.

Q. So you would agree that the best information we have is what's written in The Tobacco Institute's documents that we do have; is that right?

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A. It's information that we have. It's here in front of us.

Q. And it --

It's the best we have since you don't know; right?

A. I don't know if it's the best available. It's clearly the best that we have on the table in front of us.

Q. Well sir, now another bill that's referred to here that The Tobacco Institute listed in its report, Exhibit 1429, is Senate File 472 with a companion bill, House File 556; right?

A. Correct.

Q. And that was a bill that would have limited cigarette sampling in Minnesota; right?

A. That' not what it says.

MR. FLYNN: Not really, no.

Q. Well an attempt was made to amend that legislation with a result that a total ban on cigarette sampling would have occurred in Minnesota had it passed; right?

A. One second, please.

MR. FLYNN: That's a different statement than the preceding question, but --

You've asked two different things.

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A. Could -- could you give me the question again, please? I just needed to reread that paragraph.
Q. And an attempt was made to amend that legislation with a result that a total ban on cigarette sampling would have occurred in Minnesota had it passed.
A. That's what this document says.
Q. Now another bill that was listed in this document that was opposed by The Tobacco Institute was Governor Perpich's legislation to increase the cigarette tax by 15 cents per pack in order to segregate revenues for youth education, stop-smoking programs, workplace initiatives, sampling bans and so on; right?
MR. FLYNN: Well finish it if you're going to read it, because --
You've read part of the statement. What's the -- what's the question?
A. What's the question?
Q. I'll read it again.
Another bill that was listed in this document that was opposed by The Tobacco Institute was Governor Perpich's legislation to increase the cigarette tax by 15 cents per pack in order to segregate revenues for youth education, stop-smoking

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programs, workplace initiatives, sampling bans, and then other items including sewer construction; right?

A. That bill's --

MR. FLYNN: I object to the tense --

The document speaks for itself. I don't know if this says they opposed that or not. The portion you said doesn't say opposed, it just reports the existence of it. And then the action notes talk about --

MS. WIVELL: I object to your speaking objections.

MR. FLYNN: Well --

MS. WIVELL: This is totally inappropriate. And I'll call the court, Mr. Flynn, if it happens one more time.

MR. FLYNN: Oh, don't do that, please. Just -- just --

MS. WIVELL: I didn't think you'd want me to.

MR. FLYNN: Well just don't threaten me like that. If you want to read the thing, read the thing. But there's no basis for the question that it opposed. If you want to read it to him, fine, read it to him. He obviously doesn't know about the bill in his own knowledge.

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A. Could you give me the question again, please?

Q. Yes, sir.

Now another bill that's listed in this document that was opposed by The Tobacco Institute was Governor Perpich's legislation to increase the cigarette tax by 15 cents per pack in order to segregate revenues for youth education, community stop-smoking programs, worth -- workplace initiatives, sampling bans, advertising bans, sewer construction, mosquito control and, quote, general mischief, close quote; right?

A. That bill is listed in this report.

Q. Sir, and isn't it true that the legislative initiatives which were introduced into the Minnesota legislature in 1985 were considered so significant that every possible legislative, political, social, and theoretical angle was being utilized by the tobacco industry to secure victory against those bills?

A. I would imagine that if we got involved on one side or another of a bill, we did what we could to be -- to -- to be successful.

Q. Well sir, all of these --

A. That would be logical.

Q. All of these bills that are listed here were

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opposed by The Tobacco Institute; weren't they, sir?

MR. FLYNN: Listed where, on Exhibit 1429?

MS. WIVELL: Yes, sir.

MR. FLYNN: Again it speaks for itself, but if you can confirm that.

A. For -- for the most part, they're cigarette tax -- excise tax increase bills that I have to assume we would have opposed.

Q. Well they were considered to be a revolutionary attack on the tobacco industry; weren't they, sir?

A. I have not seen --

I don't know that. Taxes have been around for a long time. I don't know when they've become revolutionary.

(Plaintiffs' Exhibit 1430 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1430, this is a document dated approximately one month -- I'm sorry. This is a document dated approximately two weeks after Exhibit 1429; right?

A. That's what the document says.

Q. And for the record, it's Bates number 680581757; right?

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A. Correct.
Q. And there is -- strike that.
This is another legislative report on the status of the Minnesota legislature; right?
A. It says it's a Minnesota legislative status.
Q. And it's called an auxiliary update to the March 28th, 1985 Minnesota legislative status report.
A. That phrase is in the first sentence of the memo.
Q. And sir, if we go down to the second sentence, we -- or the second paragraph, it reports on the situation in the Minnesota legislature as having been uncommonly active; right?
A. That's the phrase used.
Q. And it says, "A raft of legislative issues in the form of taxation, regulation and prohibitions have found their way through the Minnesota legislative process. The 39-point Technical Advisory Committee Report on Nonsmoking and Health, introduced in November, held the promise of 39 separate legislative proposals to be advanced through both houses. This report, a revolutionary attack on our industry, was championed not only by anti-industry organizations, but also by the strong direct lobbying of the Minnesota Department of Health." Right?

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A. That's what the document says.
Q. And it says, "The ink was not yet dry on this report before our lobbyists initiated an aggressive and focused effort in communication with legislative leadership and targeted key legislative activists;" right?
A. That's what the document says.
Q. And it says, "This effort was very successful" -- I'm sorry, strike that.

It says, "This effort was successful in preventing a majority of the report from seeing its way from the drafting board to the legislator's hand;" right?
A. That is what the report says.
Q. All right. Now sir, you have no reason to disbelieve what was written here in this report on the Minnesota legislative status; do you?
A. I have no information that would affect that one way or the other.
Q. And sir, that would include the efforts -- I'm sorry, strike that.

The effort to oppose the bills that were introduced in 1985 were done with the knowledge that one of the objectives of some of that legislation was to prevent youth smoking; right?

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MR. FLYNN: Objection, it speaks for itself. If there's something you can focus him on that says that --

MS. WIVELL: Objection, Mr. Flynn. I'd just like you to say the word and that's fine. We don't need your continued involvement.

MR. FLYNN: We're going to get my participation whether you like it or not. If you want to focus him on a portion of the document that affirms your statement, do so, but the document speaks for itself and it doesn't say that in my reading.

A. I -- I'd like to hear the question again.

Q. Certainly.

The effort to oppose the bills that were introduced in 1985 were done with the knowledge that one of the objectives of some of that legislation was to prevent youth smoking; isn't that right?

MR. FLYNN: Same objection.

A. I have --

I have no knowledge as to specifically why any of those bills might have been opposed, other than I'm pretty familiar with the Institute's attitude on increasing the cigarette excise taxes. It's a pretty logical position for us to take.

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Q. Well sir, it is The Tobacco Institute's position, isn't it, that cigarette tax revenues should not be used to fund Medicaid costs relating to smoking; right?

A. I don't know that that's our position at all.

Q. Well sir, you agree that one --

A. The legislature decides what they spend tax revenue on.

Q. Well sir, you would agree that the legislature did not pass Senate File 38; correct?

A. I don't know if Senator Diessner ever requested a hearing for Senate File 38.

Q. Sir, the legislation -- I'm sorry.

You would agree, wouldn't you, that the legislature has not dedicated cigarette tax revenues to fund Medicaid costs related to smoking?

A. To my knowledge, they have not made that allocation of funds.

Q. And that's a position the tobacco industry agrees with, isn't it?

A. I do not know that that's a fact.

Q. Well --

A. I don't know that.

Q. You just don't know one way or the other; is that right?

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A. I don't know that that is a Tobacco Institute position.
Q. But we do know --
A. I don't --
Q. -- that when Dr. Diessner introduced SF 38 that would have earmarked certain cigarette taxes for -- to fund Medicaid costs, The Tobacco Institute tried to kill that document; don't we?
MR. FLYNN: Object. The document speaks for itself. And what the bill did or didn't do, I guess it speaks for itself.
If you know this, tell her.
A. I don't know -- I --
I don't know what specific reason the Institute would have taken a position on that bill other than I know that cigarette excise taxes are not a method of taxation that the Institute endorses.
Q. But we do know from the last sentence on page 1429 that efforts --
A. I'm not sure where you are.
MR. FLYNN: Wait. Where are you?
Q. -- continued to kill the bill in committee; right?
A. I'm not sure where you are.
MR. FLYNN: What are you looking -- 1429.

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You mean Exhibit 1429?

MS. WIVELL: Yes, sir.

MR. FLYNN: You don't have that in front of the witness; you have 1430. So if you want him --

THE WITNESS: I have 1430.

MR. FLYNN: -- to look at another document, let's have it presented.

MS. WIVELL: Could you go back to 1429, please?

MR. FLYNN: He has to have --

THE WITNESS: It's here. Yeah. It's right here.

MS. WIVELL: Now sir --

MR. FLYNN: Now what's the question?

Q. Sir, you would agree that, according to the last statement on the first page of Exhibit 1429, efforts were made to kill SF 38 in committee; right?

A. That's what the document says. I have --

This document doesn't say and I have no knowledge about why.

Q. Now you know that the Senate File 38 never did get out of committee; did it?

A. I don't know that. Do you know that?

Q. Yeah, as a matter of fact, I do.

A. Are we done with these two?

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Q. No.

(Plaintiffs' Exhibit 1431 was marked for identification.)

BY MR. FYNN:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1431, --

A. Uh-huh.

Q. -- this is Senate File 38; isn't it, sir?

A. Looks to be a copy of Senate File 38 from 1984.

Q. And we know that the first time it was read was January 10th, 1985; right?

A. That's what it says.

Q. We know that from the front of the document.

A. Correct.

Q. And we know that there is no other indication that any action was ever taken on this bill; right?

A. There is no indication that the author ever asked for any action to be taken on this bill.

Q. Well sir, apparently you would agree that The Tobacco Institute was successful in killing this bill; right?

MR. FLYNN: Objection, it's pure argumentative.

A. I don't know that. All I know is that the bill was not heard in the committee that it was referred

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to. Why? There are million reasons why that doesn't happen.

Q. Now sir, you don't know what was done by The Tobacco Institute to kill that bill; do you?

MR. FLYNN: Objection. It assumes a state of facts that is not established. But it's argumentative as phrased.

You don't know what --

THE WITNESS: I don't --

MR. FLYNN: -- they did the bill period; right?

THE WITNESS: No. It's --

A. It is slightly more helpful to have this piece of paper in front of me, because from this piece of paper, there is nothing here to indicate that there was ever a hearing requested on this bill, and that -- I have no idea what the Institute may or may not have done in regard to any aspect of this bill.

Q. Well sir, isn't it true that every legislative, political, social, and theoretical angle was used to get the tobacco industry out of the 1985 session of the Minnesota legislature?

A. I have no idea.

Q. All right. Could you turn to the last page of Exhibit 1430, sir.

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THE WITNESS: Just a second. Do you need these back in any particular order?

THE REPORTER: No.

A. The last page of 1430.

Q. Yes. Doesn't it begin by saying, "Every possible legislative, political, social and theoretical angle is being utilized in our efforts to get out of this session unscathed?"

A. That's what this memo says.

Q. And it goes on to talk about needing a complete victory; doesn't it?

MR. FLYNN: Objection, it speaks for itself.

A. You've partially read this document.

Q. All right. It goes on to say, "Since Minnesota has seen fit to designate itself, as Surgeon General Koop stated, quote, a model for the country, quote, with regard to anti-smoking legislation, our only choice in this matter is a complete victory;" right?

A. That is the opinion of Mr. Brozek.

Q. And who is he, sir?

A. To my knowledge, Michael was a regional vice-president with The Tobacco Institute.

Q. Mr. Brozek goes on to say, "Anything less could be used against us in other states. We will employ

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all means to secure that victory." Isn't that true, sir?

A. That's what this memo says.

Q. And you don't know what means were used to keep SF 38 from ever reaching or getting out of the committee that it was assigned to; do you?

A. I have no idea.

Q. Now sir, you understand that a full court press was put on in the state of Minnesota to try and prevent the legislation which had been introduced during that session; right?

MR. FLYNN: Object, as phrased it's vague and ambiguous.

A. Whatever the definition of "a full court press" is.

Q. You just --

You don't know what that phrase means?

A. I don't know what context it's being used in and what it refers to or --

Q. Now sir, there was a coordinated industry effort to try and defeat all the anti-tobacco legislation that had been introduced into the legislature in 1985; wasn't there?

A. Again, I don't know that.

(Plaintiffs' Exhibit 1432 was marked

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for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1432, this is a report to the State Activities Policy Committee of The Tobacco Institute dated June 3rd, 1985 from Roger Mozingo; correct?

A. That's what the document says.

Q. What was Mr. Mozingo's position?

A. I don't know.

Q. For the record, Exhibit 1432 is Bates number 505094479; right?

A. That's what the document says.

Q. There is an update on Minnesota legislation that begins -- or that is on page 4482. Could you turn to it, sir?

A. Yes, ma'am.

Q. There it says, "Mr. David" --

And then I can't pronounce his name again. I got a mental block. What is it?

A. Krogseng.

Q. Krogseng. Okay, let me start again.

There it says, "Mr. David Krogseng, TI legislative counsel in Minnesota, and Mr. Michael Brozek, TI Regional Vice President, joined the

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meeting and reported on the coordinated industry efforts responsible for defeating all anti-tobacco legislation in the regular session of the Minnesota legislature." Right?

A. You just read what the document says.

Q. And you have no reason to dispute what's reported here; do you?

A. Not at all.

Q. All right. Now sir, one of the bills that was introduced would have prohibited -- I'm sorry, strike that. No --

A. Could we -- could we do a very short break? I -- we're almost at another hour point here. I'd like to --

MR. FLYNN: How far do you have? Are you nearly done?

MS. WIVELL: Oh, I have --

No, I'm not nearly done, so let's take a break. What time is it, George?

MR. FLYNN: Well I got 10 after. We've been at this 2:40, two hours and 40 minutes on this tape machine. We can go off the record.

THE WITNESS: Is it okay with you?

MR. FLYNN: Yeah, sure.

THE REPORTER: Off the record, please.

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(Recess taken.)

BY MS. WIVELL:

Q. Sir, I'm going to hand -- have the court reporter hand you a document entitled "THE ANTI-SMOKING CAMPAIGN: ENOUGH IS ENOUGH," by The Tobacco Institute, dated January 1989.

A. We're finished with 1432?

Q. For the time being.

(Plaintiffs' Exhibit 1433 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1433, that is the document entitled "THE ANTI-SMOKING CAMPAIGN: ENOUGH IS ENOUGH;" right?

A. That's what the document says, correct.

Q. For the record, it's Bates number TIMN427387; right?

A. Correct.

Q. I'd like you to turn to page 28, please.

MR. FLYNN: Dated January '89.

Q. Sir, this document was written after you became a lobbyist for The Tobacco Institute; right?

A. That would seem to be the case.

Q. At page 29, you see, toward the bottom of the

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page the statement, "Fact: 'Earmarked' cigarette excise taxes are an unreliable source of revenue;" right?

A. What -- which page are you on?

Q. Page 28.

A. I was on 29.

Q. Sorry. Do you see on page 28 the statement, "Fact: 'Earmarked' cigarette excise taxes are an unreliable source of revenue?"

A. Yes, ma'am, I see that.

Q. All right. Would you read that to yourself through the next page where it starts again "Fact?"

A. Okay.

Thank you.

Q. You've read it?

A. I have read it.

Q. Sir, is this statement that begins "Fact: 'Earmarked' cigarette excise taxes are an unreliable source of revenue" The Tobacco Institute's policy on earmarked taxes?

A. I don't think there's any question that it was as of January 1989.

Q. Is that the policy as of today?

A. I would say yes.

Q. Is this the policy of the Tobacco Institute

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beginning in the early '70s, for example?
A. That I don't know.
Q. But to the best of your knowledge, this has been a policy of the Tobacco Institute for a long period of time, what's written here on pages 28 and 29 of Exhibit 1433; right?
MR. FLYNN: Object, it's vague and ambiguous. He's kind of dated it already, but if you can answer it any better --
A. It would be my understanding that this certainly was the policy at the time this was written, I believe it is today, and it's also the policy of a whole bunch of non-tobacco organizations.
Q. Well sir, would you agree with the statement, "We don't accept the concept that activities should be taxed based on possible social cost?"
A. Where are you --
Where is that coming from?
Q. It's not from the document, sir.
MR. FLYNN: Do you want to hear it again?
A. Could you repeat it, please?
Q. Yes, sir.
Would you agree with the statement, "We don't accept the concept that activities should be taxed base on possible social cost?"

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MR. FLYNN: I object, it's so vague and ambiguous and broad, I don't know how he can answer it. But go ahead.

A. I don't --

I really don't know exactly what you mean. I mean it depends on things like how do you determine social costs and what do you factor in, how do you choose what not to factor in? So it's a very large question.

Q. Well if something -- no, strike that.

I want to turn back to the legislative effort that was made in Minnesota on behalf of the tobacco lobbyists after 1985.

But before I do that, let me ask you a question: Do you know what happened in the last hour of the session in 1985 to the bill -- the bills that had been passed concerning cigarette smoking, that had been passed by the House and Senate?

A. Without knowing specifically what those bills were, I really don't know what happened in the last hour.

Q. All right. Have you ever heard the story of the bill being misplaced -- the bills being misplaced or mislaid so they couldn't be reconciled?

A. I have -- I have never heard a story like that.

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Q. So you don't know anything about that.
A. I have never heard a story like that. Ever.
Q. By the way, sir, in one of the documents we looked at earlier, there was a reference to Wes Lane being a public affairs media resources consultant for the tobacco industry. Do you recall that, sir?
A. I --
It might help if you tell me what document you're on.
Q. 1424.
A. I don't recall reading that.
Q. And I'm referring to the last page, the second-to-the-last paragraph.
A. I've read the paragraph you've suggested.
Q. All right. It says there under the heading "PUBLIC AFFAIRS/MEDIA RESOURCES," it says "YES." It says, "TI labor consultant, Wes Lane...."
What's Mr. Lane's position with regard to the Tobacco Institute?
A. I don't believe he has a position as of today.
Q. What was his position in the past?
A. This document says he was a labor consultant.
Q. Why did --
A. I have --
Q. I'm sorry, go ahead.

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A. What I've just read is what I know.
Q. All right. Why did the Tobacco Institute need a labor consultant?
A. This document indicates that unions are traditionally opposed to regressive modes of taxation.
Q. Well did The Tobacco Institute pay Mr. Lane money?
A. I don't have any --
I have no idea. I don't know.
Q. Do you have any -- I'm sorry, strike that.
What was his role for the Tobacco Institute?
A. This document said that he was a TI labor consultant. What a TI labor consultant does or did at that time, I have -- I really don't know.
Q. How long was he a TI labor consultant?
A. I don't know the answer to that question either.
Q. Now sir, you're aware that in 1987, legislation was introduced in the state of Minnesota which was of considerable concern to the tobacco industry; right?
A. I'm not aware of specific legislation that would fall -- fall into that category, but it would seem reasonable that such legislation was introduced.
Q. Well you were a tobacco industry lobbyist at that time; weren't you, sir?

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A. I was.
Q. And you particularly --
You specifically participated in coordinating activities to defeat, for example, a 15-cent cigarette tax increase in the state of Minnesota in 1987; right?
A. Well I --
Without seeing some documentation on that bill, I don't recall that specifically, but that would be a logical --
If such a bill was introduced, it would be logical to assume that I was involved in opposing it.
(Discussion off the stenographic record.)
(Plaintiffs' Exhibit 1434 was marked for identification.)
BY MS. WIVELL:
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1434, this is another one of Michael Brozek's report on the status of legislation in Minnesota; right?
A. That's what it says.
Q. This is a Tobacco Institute document?
A. I would assume that it is.
Q. Brozek as a tobacco employee --

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A. Brozek was a Tobacco --
Q. -- Tobacco Institute employee at the time it was written; right?
A. Yes, ma'am.
Q. All right. And for the record, Exhibit 1434 is dated TIMN283375; right?
A. Correct.
Q. Why don't you take a moment or two and read it.
A. Thank you.
Thank you.
Q. All right. Sir, this particular exhibit, 1434, talks about the coordinated efforts that were made to defeat the 15-cent cigarette tax increase in Minnesota; right?
A. That's what the document talks about.
Q. All right. In fact, you were involved in that process as is described in this document; right?
A. That's correct.
Q. And that process included a continuous 6-day-per-week phone bank, among other efforts?
A. That's what the document says.
Q. The --
Well you understand that what's written here in the document is true; isn't it? You recall this; don't you?

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A. I have --

MR. FLYNN: Well that's -- that's a separate question. Do you recall it? That's your question.

A. Do I recall this specific phone bank?

I don't -- I don't -- I have no specific memory of this specific phone bank.

Q. It --

A. I don't have any reason to doubt that it didn't take place, it's just that I don't do -- I mean I had no direct --

I have no direct recollection of it.

Q. Now sir, having read the document, you have no doubt that the -- the items that are delineated here that were directed at defeating this tax increase, they were actually carried out; weren't they?

A. I have no reason to believe that they were not carried out. I do not have personal knowledge on all of them that they were carried out.

Q. Now the second page of the document refers to meetings that you took part in with lobbyists for the wholesalers; right?

A. That's what it says, yes.

Q. And with lobbyists for the smokeless tobacco lobby; right?

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A. It says that also.
Q. Let me ask you this, sir: In addition to the contracts that we saw earlier with the grocers, does The Tobacco Institute have formal written contracts with any of these other trade association groups that we've talked about in the deposition?
A. I don't believe they do. I don't believe there are contracts existing.
Q. So the --
A. To the best of my knowledge.
Q. The money that's paid to these groups is -- is paid not in terms of a contract requirement; right?
A. I would --
I would call it organizational support.
Q. What does that mean?
A. Much like --
Oh, much like Dayton Hudson, Target, Blue Cross, Blue Shield, contribute money to organizations like The Coalition for a Smoke Free Minnesota. I -- it's the -- I don't think there's a contract between -- I don't know, but I would guess that they're -- they're supporting that organization because they, I assume, agree with the goals. I -- I would characterize this as organizational support.
Q. And this is the kind of organizational report

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that's referred to in the last sec -- two and three paragraphs of the second page of Exhibit 1434; right?

MR. FLYNN: Again, they speak for themselves, but --

A. I'm not quite sure what you're asking there.

Q. Well let me put it this way: The -- the wholesale lobbyist, does the -- the --

There's reference to the wholesale lobbyist in this document; right?

A. Uh-huh.

Q. Does The Tobacco Institute give money to that lobbyist organization?

A. Without looking back at the records, I have no idea if we did in this particular year, but it -- that would be a fairly logical thing for The Tobacco Institute to do.

Q. All right. How about the -- The Smokeless Tobacco Council that's referred to here, did The Tobacco Institute give money to them?

A. Not that I'm aware of.

Q. All right. Now, sir, you would agree that this was -- I'm sorry, strike that. You would agree that in 1978 -- I'm -- strike that. Wrong year.

You would agree that in 1987 there was a

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coordinated effort to try and defeat the legislation that was introduced that was considered anti-tobacco.

A. You're referring to the 15-cent cigarette tax increase.

Q. Well there was more; wasn't there?

A. That would not surprise me, but I don't recall off the top of my head what bills were introduced in 1987.

Q. All right.

THE REPORTER: Let's go off the record a moment, please.

(Discussion off the record.)

(Plaintiffs' Exhibit 1435 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1435, this is a Minnesota legislative action plan developed by the State Activities Division of The Tobacco Institute; right?

A. That's what it says.

Q. It's dated October of 1987?

A. It is.

Q. And if we turn to the page that ends with Bates number 200, it discusses the 1987 experience in the Minnesota legislature; doesn't it?

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A. It is entitled "THE 1987 EXPERIENCE."
Q. All right. And sir, it refers to the 1987 legislative session as one of the most punishing in our industry's history; doesn't it?
A. I've not read the document. Would you like me to do that?
Q. Why don't you read this page.
MR. FLYNN: I think while you're doing that, you got this double marked.
MS. WIVELL: Do I?
MR. FLYNN: Yeah.
MS. WIVELL: Let's go off the record.
THE REPORTER: Off the record, please.
(Discussion off the record.)
MR. FLYNN: For the record, 1435 and 1427 seem to be the same document, but we'll just go on, figure it out later.
BY MS. WIVELL:
Q. And sir, you had the opportunity to read the page of Exhibit 1435 that ends with Bates number 200; right?
A. I have. Thank you for that opportunity.
Q. All right. And it says in the first sentence under the heading "The Challenge," "Minnesota's 1987 legislative session was one of the most punishing in

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our industry's history;" right?
A. That's what this document says. It certainly was the opinion of the author.
Q. All right. Now sir, you have no information that would disagree with that assessment of the 1987 legislature; would you?
A. I have no information that would disagree with that.
Q. All right. Do you agree with what's written there?
MR. FLYNN: The whole --
That sentence?
MS. WIVELL: Yes, sir.
A. It looked like it was a very busy session.
Q. Now among the things that are listed there is a list of smoking-related legislation that was introduced; right?
A. That appears to be the list here, yes.
Q. All right. And sir, the industry tried to kill all those bills that are listed on this page; isn't that true?
A. There are a lot of bills listed here. I would say it's probably accurate to say that we were against most of these bills and tried to modify them. Without going back into the history of each

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one, it's a little difficult to say we tried to kill them all.

Q. Well, you would agree that The Tobacco Institute was against House File 32, the vending ban; right?

A. Yes.

Q. And you would agree that the Tobacco Institute was against or worked against House File 27, the smoking restrictions in schools bill; right?

A. That one I'm not sure about. Without looking at that bill, it would be difficult to say.

(Plaintiffs' Exhibit 1436 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1436, this is House File 227; isn't it? This is the bill that's referred to --

A. Correct.

Q. -- in --

It's referred to on page -- the page that ends with Bates number 200 of Exhibit 1435; right?

A. Correct.

Q. And sir, this bill would have, at least in part, beginning in the 1989-90 school year, prohibited cigarette smoking and the use of other tobacco products in school buildings by all personnel;

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right?

MR. FLYNN: You've stated a portion of the bill, but anyway, if you can affirm that.

A. That's what the bill says.

Q. All right, sir, and the tobacco industry fought that bill; didn't it?

A. I have no recollection of fighting this bill. As I look at the bill, I don't see that it was -- that the author ever requested a hearing on it.

Q. Well sir, was this one of the bills that the tobacco industry succeeded in killing before it got out of committee?

A. I don't recall opposing this bill. I don't recall a hearing ever being requested on this bill. That is up to the author to do. I don't have any recollection of opposing this bill.

Q. Well sir, could other persons who lobbied in the legislature on behalf of The Tobacco Institute in 1987 have worked to kill House File 227 which would have restricted smoking in the schools?

A. To my knowledge, no one would have had reason to do that. The bill was not heard in committee. The bill --

It looks to me like a bill that was introduced by the author and not proceeded with.

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Q. Well sir, isn't it true that this bill did come out of committee, as demonstrated by the fourth page of Exhibit 1436?

A. Where is that?

Q. 1436 is the bill.

MR. FLYNN: That's this bill. You got two copies of the bill.

A. Ah, here we are.

MR. FLYNN: For the record, --

A. Yes.

MR. FLYNN: -- the witness is now looking at the fourth page of what's been marked as Exhibit 1436.

A. Which is a later version of page one.

This looks like it was heard in committee and passed.

Q. All right. And then it was defeated -- strike that.

Then the tobacco industry was successful in keeping this bill was progressing; right?

MR. FLYNN: Take the time, read the whole -- because there's another page of history other than this page, which is I guess how you read these bills. I don't --

A. These really are separate things.

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According to the -- to the official record in this document, it was read the second time on March 5th, amended, and I believe the handwritten notation is that it -- that it was progressed as amended --

Q. And "progressed" --

A. -- on March 5th.

Q. -- means nothing was done; right?

A. That's a request --

In most cases, to the best of my memory, that's a request by the author of the bill to put the bill back on general orders of the calendar. That is the way I remember -- recall that, in general, in the legislative process.

Q. But bill House File 227 made it to the floor and died there; right?

A. It --

It looks like the author progressed the bill. It looks like the author put the bill back on -- on general orders.

Q. And what does that mean, sir?

A. That means that the author either didn't like an amendment -- well I mean it's hard to say what the author's reason for doing that is.

MR. FLYNN: Well what does it mean to a layman? Does he withdraw the bill?

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THE WITNESS: Well it's just -- it's still alive but it's put back on general orders; it doesn't proceed to the next reading. And that's usually at the author's request.

Q. And sir, that's what you do when you don't have the votes to pass it; right?

A. I have to believe that could be one reason why you progress your bill. But the real question is why -- you know, who knows what --

I don't know that that's why Representative Nelson progressed his bill.

Q. All right, sir, you know that another one of the items that was on the legislative session agenda for 1987 was a bill relating to consumer protection, prohibiting vending-machine sales of tobacco and tobacco products; right?

A. From the list in 1435, it looks like there were at least two House bills on that subject.

Q. All right. And I'm referring to House File 32. You're aware of that bill; aren't you, sir?

A. I have --

I couldn't recite that bill to you, but I have absolutely no reason to doubt that House File 32 dealt with anything besides vending machines.

(Discussion off the stenographic record.)

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(Plaintiffs' Exhibit 1437 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1437, this is a copy of House File 32; right?

A. Yes.

Q. And this is a bill that is referred to on the list of those that were being fought by the tobacco industry; right?

A. It appears on the list in document number 1435.

Q. And according to your prior testimony, those things that were listed on 1435 were being opposed by the tobacco industry; right?

A. They were certainly of interest. I do not recall specifically that each of these things were opposed by the tobacco industry. They are --

It appears to be a list of bills that related to tobacco and therefore we would have an interest in.

Q. Now sir, this bill, according to its title, would have related to consumer protection, and prohibited cigarette sales in vending machines; right?

A. I've not read the full bill yet. Perhaps I should do that before I answer.

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Q. All right, why don't you do that.
A. It looks like a complete and total vending machine ban.
Q. Yes. And the tobacco industry opposed this bill; didn't it?
A. We opposed a total and complete vending machine ban. I --
Again, looking at this bill, I don't see that the author requested a hearing for it.
Q. Well sir, that's not my question. My question is: The tobacco industry opposed House File 32; isn't that true?
MR. FLYNN: Objection, it's argumentative. He's answered it already.
You can answer it again.
A. I don't know that we opposed House File 32. It doesn't look like the --
It looks like another bill that was offered by a legislator, and I see no indication here that it was heard.
Q. Well sir, during this legislative session, each lobbyist working for the tobacco team was assigned a specific legislator, committee and administrative head to be responsible for; right?
MR. FLYNN: Again I object. If you're

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reading --

A. I don't know that that's true.

MR. FLYNN: -- the document, it speaks for itself.

Q. Well could you turn to page 201 of Exhibit 1435. There is a discussion of the lobbying team that was in place in 1987; right?

A. I've not read it, but that's what it looks to be titled.

Q. All right. And would you read this page to yourself.

A. Yes.

Q. Also please read the next page.

A. Sure.

Q. You've read those, sir?

A. Yes, I have. Thank you.

Q. Now that --

Those pages of Exhibit 1435 describe the efforts that were made against the bills that were introduced that the tobacco industry thought they were opposed to during the 1987 legislative session; right?

MR. FLYNN: It speaks for itself, but --

A. It describes specific things that were done during that legislative session.

Q. And it says here, "Each lobbyist was assigned a

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specific legislator, committee, administration agency head, staff member or issues analyst to be responsible for each legislative measure's progression." Right?

A. I'm very confused. It says that and I'm very confused about what the author is saying there. I don't know exactly what that statement means.

Q. Well sir, are you denying that the tobacco industry, for each one of the issues that is listed, the legislation that was introduced in 1987 that's listed on page 200 of Exhibit 1435, didn't assign a specific lobbyist to try and kill the bill?

MR. FLYNN: Well that's a whole different question, but --

A. That's not what this --

That's , I guess, my problem with your question. I don't know if that's what this sentence says.

Q. All right. Well it says here --

A. And I --

Q. -- that each lobbyist was assigned --

MR. FLYNN: Wait, were you done? Wait wait, wait. Let him answer. Are you done with your answer?

A. Actually, I'd like you to restate the question

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because I think --
Q. That's what I'm trying to do.
A. I know. I'm really trying to be nice.
Q. Well sir, it says here that, according to that sentence, each lobbyist was, quote, "responsible for each legislative measure's progression;" right?
A. It says, "Each lobbyist as assigned a specific legislator, committee, administration agency head, staff member or issues analyst to be -- to be responsible for each legislative measure's progression."
Q. All right. Let me put it this way --
A. It doesn't say that the lobbyist was -- that's why it's a very confusing sentence and I'm not -- I'm not even sure what the author of this document was trying to say here, which is, I guess, the point I'm trying to make to you. I don't know what he's saying.
Q. You would agree that when any piece of what is considered to be anti-tobacco legislation is introduced in the Minnesota legislature, someone is assigned to be responsible for looking after that piece of legislation; right?
A. It oftentimes isn't one person that does that. It's not -- I mean --

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We certainly identify legislation that we're interested in, as this list would indicate, and a system is set up to track and -- and see where that legislation is, what's going on with it. But it doesn't -- it's not like one person gets an assignment to follow that stuff.

Q. All right. You would agree, sir, that House File 32 begins with the statement that "The legislature finds that the strict regulation of the sale of tobacco and tobacco products is essential to the protection -- to protect the children of this state from this addicting and hazardous substance;" right?

A. That's what the --

That's what this bill says.

Q. All right. Now let me ask you this: Knowing that that's what the bill says that was introduced, you would agree that it was the -- in the tobacco industry's interest to either kill that bill or change it in some way so that it didn't have that opening statement; right?

MR. FLYNN: I object to that as pure argumentative and without any foundation. But if you can address it, go ahead.

A. I don't agree with that statement at all. This

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is --

You know, I forget what we -- there's a phrase for this opening section one and the legislatures -- the legislature has historically eliminated those policy-type statements from many bills as they go through the -- through the process. This is not --

I mean that policy statement isn't what the bill was about. As I read this bill, it's about do you have to ban completely and totally tobacco vending machines in order to control who buys the product from them?

Q. All right. Well sir, let me ask you this: Has the tobacco industry consistently, excluding last session, fought bans of cigarette sales out of vending machines?

A. I don't --

I can't say that we have ever supported a total ban on vending machines. We think there are other ways and there are other reasonable, less-intrusive ways to control who uses a vending machine.

Q. Sir, isn't it true that The Tobacco Institute and the other members of the tobacco family in Minnesota fought House File 32?

A. I'm trying very hard to find a forum where we would have fought it. The bill looks to me like a

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bill --

This bill looks to me like a bill that was introduced and not heard. It was introduced, read, assigned to a committee, and not heard. It would be very difficult for me to -- to describe to you a forum where we would have opposed this particular bill. There clearly --

It shouldn't surprise anyone that people disagree on whether to control vending machines, you ban them or change them or -- there are any -- any number of ways to deal with the subject, but I don't know that House File 32 ever went anywhere.

Q. Well sir, did anyone from the tobacco team go to the author of this bill and ask that it not be heard?

A. Not to my knowledge.

Q. Did anyone go to the chairman of the Committee of Health and Human Services and ask that this bill not be heard?

A. Not to my knowledge.

Q. Could have happened and you just don't know; right?

A. That is one --

That is one possibility. I don't know that anybody ever made the request that you just described.

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Q. Well sir, the tobacco team from time to time approaches committee chairs and requests that bills not be heard; right?

A. I'm sure there are instances where that -- where lobbyists for any number of groups discuss the hearing schedules with committee chairs, for tobacco, for about any other client group that you can think of.

Q. And when you referred to in your last answer "hearing schedules," you're talking about making sure that a bill doesn't get a hearing at committee; right?

A. That's the choice of a chair or a -- or a -- or the author of a bill. If the author doesn't make a request for a hearing, it's unlikely that a chair is going to put it on his schedule.

Q. But you would agree that the tobacco team from time to time has approached committee chairs and asked that what it considered to be anti-tobacco bills not be given hearings; right?

A. That's something that could have happened. I don't recall a specific instance where that happened. I -- I can say that we have asked -- I can tell you from my direct experience that I have asked a committee chair, if he had a hearing schedule

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ready, if a bill was going to appear on it, on a hearing schedule.

Q. So you --

A. It's their decision.

Q. You've asked to have bills not appear on hearing schedules; haven't you? That's part of what lobbyists do; isn't it?

MR. FLYNN: Okay. Now without all the inflections, the same question. If you can answer it any better, or you can answer it again.

A. I think I've answered it as well as I can.

Q. You have asked to have committee chairs not give bills hearings, haven't you, on behalf of The Tobacco Institute?

MR. FLYNN: That's the fourth time you've asked it now. He'll answer it one more time.

A. I don't have --

I don't have direct recollection of going to a committee chair and asking that question. I have recollections of talking to committee chairs about what their schedule was, what was going to appear.

Q. Well, you would agree that from time to time you have approached, on behalf of The Tobacco Institute, legislative leadership and requested that a bill not be heard.

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A. That --

I don't have a direct recollection of a conversation like that, but that is -- that is something that a lobbyist might do.

Q. Well that's something that you have done; isn't it, sir?

A. I have no direct recollection of that. But that is something that a lobbyist, for any group that has a lobbyist, might do.

Q. On what bills have you done that, sir?

MR. FLYNN: He's already answered that.

A. I don't know.

Q. Now sir, if you were concerned that a bill you opposed might have support, isn't it one strategy to keep that bill from getting a hearing?

A. Lobbyists don't generally get to decide whether a bill gets a hearing or not. A committee chair gets to make that decision.

Q. And lobbyists use their influence to try and make sure, sometimes, that bills they oppose don't get committee hearings; isn't that true?

A. I have to believe that over the course of the history of the state of Minnesota, lobbyists have made that request of -- of people. Whether the request is honored or not is up to the committee

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chair.

Q. Sir, do you know if other lobbyists on behalf of the tobacco industry have made requests that certain bills, like House File 32, not get hearings?

A. I have no recollection whether anyone asked that House Bill 32 not receive a hearing.

Q. Now sir, we know based on Exhibit 1435 that there were efforts directed at defeating legislation which had been introduced in the 1985 legislative session, which are described on pages 201 and 202 of that exhibit; right?

A. I think it refers to the '87 legislative session. Did you say '85?

Q. I'm sorry, I thought -- or I -- I did, but let me rephrase the question.

We know, based on Exhibit 1435, that there were efforts directed at defeating legislation which had been introduced in the 1987 legislative session which are described on pages 201 and 202 of Exhibit 1435; right?

A. That's what the exhibit describes, correct.

Q. It describes here a continuous 6-day-per-week phone bank; right?

A. Talks about a phone bank.

Q. Talks about numerous post cards and waves of

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letter writing.
A. I don't see "waves." It talks about --
Q. Well I see first wave, second wave and third wave. Don't you?
A. That's what it says. I --
Yeah, it does use the word "wave."
Q. Now sir, there are numerous -- strike that.
Talks about 20,000 post cards being printed and distributed by wholesale, retail, and member companies which were sent out so that people can send them to their legislatures -- legislators.
A. If they chose --
If they close to send them to their legislators, that was the purpose.
Q. And sir, those efforts were aimed -- strike that.
Sir, turning back to House File Exhibit 32, this bill also would have provided the Attorney General with authority to institute civil actions in the name of the state of Minnesota in district court for violations of the bill; right?
MR. FLYNN: Again it speaks for itself, but --
A. That's what the bill says.
Q. And sir, isn't it true that The Tobacco

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Institute knew that the Attorney General of the state of Minnesota did not have the authority at the time this bill was introduced to institute actions in violation of laws prohibiting sales of cigarettes to minors?

A. I don't know what the Attorney General's powers were in regard to initiating -- initiating legal actions in regard to selling cigarettes to minors. The language that you refer to in House File 32 I assume is specific to a violation described in House File 32.

Q. And House File 32 would have prevented cigarettes being disbursed by vending machines; right?

A. To anyone.

Q. To anyone. That's right. Right?

A. That would seem to be the purpose of the -- of the bill.

Q. Now sir, did The Tobacco Institute support the prevention of cigarette sales via vending machines that's referred to in House File 32?

A. Could you restate that for me, please?

Q. Certainly.

Did The Tobacco Institute support the prevention of cigarette sales via vending machines as referred

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to in House File 32?
A. We opposed a total ban on vending machines. We supported at some point in history other ways to control access to vending machines. I don't know if that was in 1987 or -- or another year.
Q. Now sir, you have in -- in the past lobbied personally against vending machine bans sales -- strike that.
You have lobbied personally in the past against bans on cigarette sales from vending machines; haven't you?
A. That is true.
Q. You've lobbied not only the state legislature, but you have lobbied White Bear Lake and Chanhassen and numerous other municipalities who have considered such bans.
MR. FLYNN: Object to the question as vague and ambiguous, what you mean by "numerous other."
A. I have not lobbied in all those places that you've talked about. I -- I remember being at least in the room in Chanhassen when this issue was discussed by the city council.
Q. Why were you there, sir?
A. Very curious as to what would happen.
Q. You were there also because you had arranged for

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others to speak to the city council of Chanhassen opposing a cigarette sale through vending machines ban.

A. The appearance of other witnesses would not necessitate my being in the room.

Q. That doesn't answer my question, sir.

You were there because you had arranged for --

A. No.

Q. -- other witnesses; hadn't you?

A. Are you asking me if I had arranged for other witnesses, or are you asking me if that's why I was there?

Q. Sir, you had arranged for other witnesses to be there.

A. I had --

I had arranged for other witnesses to be there.

Q. In other words --

By the way, were these other witnesses Tobacco Institute personnel?

A. Without looking back on the records, I don't remember who testified before the Chanhassen city council specifically. I know that there were -- there were other people that testified on the Chanhassen ordinance.

Q. Now the other people that testified, were they

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tobacco family members?

A. As I have already mentioned, I don't know -- I don't recall specifically who testified.

Q. Now sir, you're aware of the fact that 86 percent of adult daily smokers started smoking by the age of 18; aren't you?

A. Am I aware of that as a fact?

Q. Yes, sir.

A. I am not aware of that as a fact.

Q. Well sir, you're aware of the fact that 44 percent of teenagers who smoke regularly are daily smokers; right?

A. I have no knowledge of that.

Q. Sir, are you aware of the fact that one-third to two-third of -- two -- I'm sorry, strike that.

Are you aware of the fact that one-third to one-half of kids who experiment with smoking become regular smokers?

A. I don't know the statistics that you're talking about.

Q. Sir, are you aware of the fact that 70 percent of teen smokers, given the chance to do things differently, wouldn't start smoking?

A. I have no idea what study you're -- you're quoting.

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Q. Have you read the Surgeon General's report that addresses teen smoking?
A. I have not read the whole report.
Q. Have you read the portion that talks about teen smoking?
A. I don't believe that I have.
Q. Now sir, while you were lobbying --
By the way, when you were talking about lobbying Chanhassen, you did lobby to prevent the ban of cigarette sales to -- via vending machines.
MR. FLYNN: I object to your question. He hasn't admitted he lobbied anything in Chanhassen, but if you want to ask him that --
A. I was in the room the night that the Chanhassen city council discussed an ordinance to ban vending machines. I don't have a recollection of speaking to any member of that city council.
Q. But you did, just so we're clear here, arrange for speakers to speak to the city council.
A. Yes.
Q. And you did so so that they would speak in opposition to the vending machine sales ban; right?
A. I don't recall if we were simply opposed to the ban or if we had -- if there were alternatives to be offered. There was -- it's a --

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It's a fairly contentious question, whether you have to ban something in order to -- to control its use.

Q. Well sir, you were aware at the time you went to the Chanhassen city council meeting where the subject of cigarette smoking -- or cigarette sales via vending machines was discussed, that for youth under the age -- or between the ages of 13 and 15 in the state of Minnesota, the success rate for buying cigarettes from vending machines was 65 percent; weren't you?

A. I don't know if I was aware of that statistic -- statistic at the time or not.

Q. Well sir, you were aware at the time that you went to Chanhassen and arranged speakers to speak in opposition there, that the success rate for teenagers buying cigarettes out of vending machines, according to one study, was 82 percent; right?

A. I have no --

I do not know that I've read the study that you're quoting from.

Q. Well sir, were you aware that -- of information, when you were lobbying Chanhassen, that over one-half of tenth graders who smoke named vending machines as their primary source of cigarettes?

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MR. FLYNN: Okay. I -- I object. You're now slipping the word "lobbying." He denied lobbying. All he said is he's there. So as phrased, I object to the question.

Q. Well let me rephrase the question.

When you were arranging speakers to speak about the Chanhassen proposed ban on selling cigarettes out of vending machines, were you aware that over one-half of tenth graders who smoke named vending machine as the primary source of cigarettes?

A. I cannot say that I was aware of that. I don't know what study you're reading from.

Q. Well actually, sir, I'm reading from a -- something that Mr. Thomas Briant sent to you dated November 14th, 1989.

(Plaintiffs' Exhibit 1438 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1438, this is a document Bates numbered TIMN458047; right?

A. Correct.

Q. And you received this document from Tom Briant at or about the time it was written; isn't that true?

A. That's what the document says, that I did.

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Q. All right. And Mr. Briant sent you a White Bear Lake study data sheet, according to the cover letter; right?

A. There is an attachment from the White Bear Lake Tobacco-Free Youth Project.

Q. All right. And that's the second and third pages of the Exhibit 1438.

A. Correct.

Q. Now sir, by the way, arranging speakers, that's part of your lobbying activities; isn't it?

A. In some cases.

Q. Well, when they --

When you arranged for speakers to speak about the Chanhassen ordinance, that was part of your lobbying activities; wasn't it?

MR. FLYNN: I object, it's vague and ambiguous. It's semantical. It is what it is. I guess a court or jury can call it what it wants.

A. I don't know if that's a lobbying activity or not.

Q. You -- you don't know; is that your testimony?

MR. FLYNN: He's answered. That's what he said.

A. I'm --

Can I ask a question, please?

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MR. FLYNN: You want to take a break?

Q. I'd like an answer to my question, since there's a question pending.

A. I'm very unclear as to what document 1438 has to do with the Chanhassen --

I'm getting very confused about where -- whether you want me to be in White Bear Lake or whether you want me to be in Chanhassen. I don't understand the relationship between this document to the series of questions that you asked me about Chanhassen. Is that clear?

Q. Just so we're clear, the Chanhassen ordinance that we've been discussing would have banned cigarette sales from vending machines; right?

A. That's true.

Q. All right. And when you arranged speakers to speak in opposition to that vending machine ban, you were doing so in your capacity as a lobbyist for the tobacco industry; weren't you, sir?

MR. FLYNN: I object, it's just argumentative whether it's a lobbyist or what. But if you can answer it again, go ahead.

A. I don't know if it's a lobbying activity. I mean it --

I was involved in the Chanhassen ordinance

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because I was a consultant to The Tobacco Institute. Whether that -- there -- I mean -- I --

I'm not sure that everything that I do comes under the definition of lobbying.

Q. And did you arrange these speakers in your capacity as a consultant for the tobacco industry -- Institute?

A. To the extent that I was involved in having someone there to answer questions, it would have been because I have -- I was a consultant to The Tobacco Institute.

Q. Fair enough.

Now turning your attention to Exhibit 1438, Mr. Briant provided you information about the tobacco -- the Chanhassen ordinance; right? That's point two on the front page.

MR. FLYNN: Again it speaks for itself. He gave him the ordinance, but --

Here, stick with page one. What it --

Do you want the question reread so you got it in mind?

THE WITNESS: I'd like to read this first.

MR. FLYNN: Okay.

MS. WIVELL: All right, go ahead.

MR. FLYNN: Take the time to read it.

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THE WITNESS: Okay, I've -- I've read it.

Q. Mr. Briant provided you the Chanhassen ordinance that we've just been talking about; didn't he?

A. This letter indicates he did.

Q. And he also provided you the sheets which are attached entitled "White Bear Lake Tobacco-Free Youth Project;" right?

A. That's what this is, yes.

Q. All right. And those sheets give you some information about the success that children -- or I'm sorry, youth have in purchasing cigarettes from vending machines; right?

MR. FLYNN: Well they speak for themselves.

A. They give me some information from a recent -- to quote the document, results from a recent University of Minnesota survey.

Q. All right. And those --

That survey showed that for youths between 13 and 15, the success rate for vending machine purchases was 65 percent; right?

A. It would seem that that was what this survey indicated.

Q. All right. And also according to this document that you received, for purchase attempts made by a 15-year-old girl and a 14-year-old boy, the success

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rate for vending machine purchases of cigarette sales was 82 percent; right?

A. That's what this survey says.

Q. Now sir, also according to this document that you received, over half of tenth graders who smoke named vending machines as a primary source of cigarette sales -- or purchases; right?

A. That's what this study says.

Q. And sir, it goes on to say almost 60 percent of the people who smoke start by the age of 14; right?

A. That's what this document says.

Q. All right. And you had that information at the time --

You had all of this information at the time you were arranging speakers in opposition to the Chanhassen ordinance which would have banned cigarette sales by vending machines, right?

MR. FLYNN: Object, there's no foundation for that. But if you know that, go ahead.

A. I -- I don't know that I --

I cannot tell you definitively that I read this information before I arranged for speakers at Chanhassen.

Q. Well, but you knew it before you went to the Chanhassen meeting; right?

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MR. FLYNN: Same objection.

A. I don't know that.

Q. Sir, why did you stand in the back of the room and not speak at the Chanhassen city council meeting?

A. I'm not an expert on any of these matters. I don't think that there's any problem with a citizen being at a public meeting.

Q. Oh, I'm not suggesting there is. I was just wondering why you hadn't said anything.

Now sir, according to this information, most -- 90 percent of people begin smoking by the age of 21; right?

A. That's what this information indicates.

Q. Sir, did you share any of the information that we've just gone over from this White Bear Lake Tobacco-Free Youth Project with the Chanhassen city council?

MR. FLYNN: Again, object, there's no foundation. He never talked to them, I don't know how he could share it. But go ahead, answer the question.

A. I don't recall ever speaking to a Chanhassen city council member.

Q. Well did you share in any way, send them the information on these two pages about how successful

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young folks are at buying cigarettes out of vending machines? Did you ever give them this information?

MR. FLYNN: Objection, it's just argumentative. It's asked and answered already.

A. I think I've already answered the question.

Q. No, sir, you said you didn't speak to them. I'm asking if in any way you provided the Chanhassen city council members with the information that's contained in these two pages?

A. I do not recall providing them with that information.

Q. You didn't; did you, sir?

A. I do not recall providing them with that information.

Q. Highly unlikely that you would have; isn't that true, sir?

MR. FLYNN: Ma'am, you're either going to be civil or we're going to stop this deposition.

MS. WIVELL: Oh, I'm being civil, sir.

MR. FLYNN: The tone and your inflection is absolutely inappropriate. You're entitled to examine the witness. You can be forceful, you can be professional, you can be emphatic, but not what you're doing. Further, it's three and a half hours into this. We got 20 minutes and this deposition is

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done. That -- that's an hour over what your mentor, Ms. Walburn, said you'd take for this. We've been on the record with this since -- for three hours and 39 minutes with this computer system you got, and we've been here for four hours and 15 minutes. I'm telling you in 20 minutes the deposition is going to be over.

BY MS. WIVELL:

Q. Sir, it is highly unlikely that you provided the information contained in the two sheets that are the last two pages of Exhibit 1438 to the Chanhassen city council; isn't it, sir?

MR. FLYNN: He's asked -- answered it three times. Answer one more and then I'm going to instruct him not to answer again, because you keep badgering him.

A. I have no recollection of providing this specific information to the Chanhassen city council.

Q. Did you share the information contained in these two sheets with the people that you arranged to speak at the Chanhassen city council meeting?

A. I don't recall doing that either.

Q. Did Mr. Briant share with you, while you were lobbying against vending machine sale bans, the information that he had received from Professor Jean

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Forster of the University of Minnesota concerning sources of cigarettes for tenth graders in two Minnesota cities?

A. I don't specifically recall that he shared that.

(Plaintiffs' Exhibit 1439 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1439, this is a cover memo -- a cover letter from Jean Forster, assistant professor at the University of Minnesota to Mr. Thomas Briant; correct?

A. That's what the document says.

Q. And it attaches an article she had written entitled "Sources of cigarettes for tenth graders in two Minnesota cities;" right?

A. That's the title of the article.

Q. All right. Now this document bears the Bates number TIMN48 -- I'm sorry, 458040 through 458046; right?

A. Correct.

Q. Now would you take a moment and read the letter that's the first page --

A. Sure.

Q. -- of the exhibit?

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A. I've read the letter.
Q. All right. Sir, was, at the time this document was written, Mr. Briant working on behalf of The Tobacco Institute?
A. I don't know if he had a contract with the Institute or if he was working in his capacity as executive director for the wholesaler group.
Q. But you understand that Mr. Briant did pass this information on at one point in time to The Tobacco Institute; right?
A. Nothing here indicates that.
Q. Well, this document was produced to us by The Tobacco Institute.
A. That would indicate that the document was given to them then.
Q. All right. Now sir, did you have --
Have you ever read the article that's attached to the cover page of Exhibit 1439?
A. I don't believe that I have.
Q. Did anyone --
A. I don't recall reading this.
Q. I'm sorry?
A. I don't recall reading this article.
Q. Did anyone ever share with you the information that is contained in this article?

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A. I have no direct recollection of reading this article or discussing this article.
Q. Sir, what is The Tobacco Institute's position on youth smoking?
A. Unequivocally, we oppose the use of tobacco products by minors.
Q. Well sir, isn't it true that if The Tobacco Institute really opposed the sale -- the use of cigarettes by young people, by youth, by minors, that The Tobacco Institute would have supported bans of cigarette sales through vending machines instead of opposing them?
A. That does not follow at all. I don't -- I don't believe it is necessary to ban something in order to control its use.
Q. Well sir, you would agree that a very, very small portion of tobacco sales are through vending machines; wouldn't you?
A. Today?
Q. Yes.
A. They're illegal today in Minnesota.
Q. In Minnesota.
A. I suspect that it's about zero.
Q. Up to last year -- well no, let's step back.
You understand that nationally vending machine

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sales of cigarettes provide only a very small proportion of cigarette sales; don't you?

A. I don't know the numbers, but I think it's probably a pretty small number.

Q. Sir, if vending machine sales provide such a small proportion -- or a small proportion of total cigarette sales, and if preventing the use of cigarettes by people under the age of 21 is an objective of The Tobacco Institute --

MR. FLYNN: It's not under 21, it's 18.

MS. WIVELL: Well let me rephrase the question.

Q. Sir, if -- if vending machine sales provide a small proportion of total cigarette sales, and if preventing the use of cigarettes by minors is an objective of The Tobacco Institute, wouldn't it be a good idea to discourage or prohibit or stop selling cigarettes out of vending machines in order to keep a large percentage of children, who are apparently able to buy them out of vending machines, from doing so?

A. I don't agree that that follows. I don't agree that banning of that device is the only way you accomplish the goal of stopping people under the age of 18 from purchasing cigarettes.

Q. Well sir, I -- I don't think I said it's the

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only way.
A. I don't think it's the preferred way.
Q. Well sir, is --
Wouldn't it be one way to do it?
A. Clearly, it would be one way to do it.
Q. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 460, this is a memo from William Kloepfer, vice-president of The Tobacco Institute, to a variety of people; correct?
A. It looks like a memo from William Kloepfer to a bunch of people.
Q. All right. And Exhibit 460 also attaches a responsive memorandum to Mr. Kloepfer from Jack Mills; right?
A. Yes.
Q. Now the second paragraph of that document, the last page of Exhibit 460, says, quote, "The second paragraph of your suggested statement worries me. If it could be asked, 'How will we control disbursement of cigarettes from vending machines; and if we are serious about this, why not discontinue vending machine sales?'" Right?
A. That is substantially what that paragraph says.
MR. FLYNN: You didn't read it quite right.
A. It's not quite accurate, but --

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MR. FLYNN: Close enough.

Q. All right. What did I make a mistake on?

A. I believe you said "If it could be asked...."
It does not say that.

Q. It says, "It could be asked, 'How will we control disbursements of cigarettes from vending machines; and if we are serious about this, why not discontinue vending machine sales?'" Right?

A. That's what the document says.

Q. Sir, wasn't it a fact that internally at The Tobacco Institute at the time this document was written, that question was very much at issue? Why, if The Tobacco Institute was trying to -- I'm sorry, strike that.

Earlier in the par -- or the paragraph above, it says, "The preamble should make it clear that the industry has been and is on record that smoking is an adult custom;" right?

A. That's what it says.

Q. And the question about why not discontinue vending machine sales follows that; right?

A. It does.

Q. All right. And the tobacco industry has never supported any municipality or state banning the sale of vending machines -- or cigarettes through vending

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machines; right?
A. We do not support banning vending machines as the solution to the problem posed by this question.
Q. Well, my question is a little different, sir.
Has the tobacco industry ever supported any municipality or state banning the sale of cigarettes through vending machines?
A. We do not support vending machine bans.
Q. Never have.
A. We do not support vending machine bans.
Q. Never have; right? Not once.
MR. FLYNN: He's answered the question.
A. I don't recall any situation where we support bans on vending machines.
Q. Well I'm not talking about banning vending machines, I'm talking about banning cigarette sales through vending machines. The Tobacco Institute --
A. That's precisely what I'm talking about.
Q. All right. I just want to make sure we're clear here.
A. Thank you.
Q. So never --
The Tobacco Institute has never supported a ban on the sale of cigarettes through vending machines.
MR. FLYNN: Don't -- don't answer it. He's

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answered it four times. I appreciate the order --

MS. WIVELL: I want the record --

MR. FLYNN: I --

MS. WIVELL: -- to be clear here.

MR. FLYNN: I know what the order says. I also think at some point you just become totally abusive.

MS. WIVELL: I just want the record to be clear, Mr. Flynn, since there seemed to have been some mistake.

Q. The Tobacco Institute has never supported any ban on the sale of cigarettes via vending machines.

MR. FLYNN: Again, I'm instructing him not to answer. You can back in that fancy computer and you can see the exact question and answer. It says that three times.

MS. WIVELL: I'm trying to make sure the record is clear since said "banning vending machines."

MR. FLYNN: It's plenty clear, counsel. It's just become abusive.

MS. WIVELL: Let's just -- let me ask it one more time and we'll go on.

MR. FLYNN: No, he ain't going to answer it. Just go on. Okay.

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You can read your record. If you don't think it's in there, then I guess I'll stand the gaff for it. I think it's in there five times.

BY MS. WIVELL:

Q. Now sir, you're aware that in 1988 a legislative plan was adopted by the tobacco industry for the state of Minnesota.

A. I'm not specifically aware of that.

Q. Let me show you what's previously been marked as Plaintiffs' Exhibit 760. This is a legislative plan that was enacted by the industry after the 1987 legislative session; right?

A. That's what it says. It would have been after the 1987 session.

Q. All right. And sir, you would agree that the tobacco industry after the 1987 session adopted a specific plan to prevent the imposition of what it termed anti-tobacco legislation in the state of Minnesota, right?

A. That looks like what this document is.

Q. And that included a plan to create a wall of flesh in the Minnesota state legislature when bills were debated that were considered to be anti-tobacco; right?

A. I've not read this document so I don't know

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where -- where you're at here.

Q. Are you familiar with the phrase "the wall of flesh?"

A. You just said it. I don't know where that -- how that relates to any -- to a lobbying plan. I've not read this document.

Q. All right. Well have you ever read any lobbying plan for the state of Minnesota that was established by The Tobacco Institute that referred to the wall of flesh?

A. That's not a phrase that I've ever used, but that doesn't mean somebody else didn't.

Q. Sir, earlier in this deposition we talked about a list of items of interest to The Tobacco Institute that was attached to a specific contract with the tobacco -- I'm sorry -- tobacco distributors. Do you recall that?

A. The wholesale group?

Q. All right. And you recall that on that list I asked you a question about smoker versus nonsmoker insurance rates?

A. Right.

Q. All right. Isn't it true that The Tobacco Institute has adopted a specific policy of opposing different insurance rates for smokers versus

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nonsmokers?

A. I do not recall that being the case in the state of Minnesota as far as the Institute is concerned, as far as my work on it is concerned.

THE REPORTER: Let's go off the record, please.

(Discussion off the record.)

(Plaintiffs' Exhibit 1440 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1440, this is a document from The Tobacco Institute Bates numbered TIMN0034814; right?

A. That's what it says.

Q. All right. You've seen it before.

A. I have not seen this document before.

Q. Have you read it?

A. I've just glanced over it right now.

Q. All right. It's --

The subject is "Insurance Program Proposal;" right?

A. That's what it says.

Q. All right. Now sir, you understood --

You understand that there is a Tobacco Institute policy concerning smoker versus nonsmoker insurance

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rates; right?
A. As far as Minnesota activity is concerned?
Q. Nationally.
A. I am not personally aware of that. I --
As I said, I just glanced over this memo. I don't know the significance of it.
Q. It says, "Attached for final approval is the proposal for an insurance program, 'Discouraging Health Insurance Industry Discrimination Against Smokers.' This proposal is for a much needed component of our workplace program." Right?
A. That's what the document says.
Q. And it goes on to say, "The objective is simple, to discourage unfair health insurance practices against smokers;" right?
A. That's what the document says.
Q. Now you have no information which would dispute that sentence; do you?
A. I have no information as to whether a final approval was ever given or to dispute that sentence.
Q. All right.
A. I --
Q. Now sir, do you have any information you can share with us about smokers versus nonsmoker insurance rates?

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A. In my work on tobacco issues, that has never been an issue in this state. That has -- I --

I don't know what program this memo is referring to, and I don't -- I -- I don't recall legislation dealing with that topic.

Q. Sir, have you ever seen the attachment to this document?

A. I would guess not.

(Plaintiffs' Exhibit 1441 was marked for identification.)

MS. WIVELL: I'm sorry, I'm going to have to take a break.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Exhibit 1441, this is entitled "Discouraging Health Insurance Industry Discrimination Against Smokers;" right?

A. That's what the title says.

Q. And that is the title of the document which, according to Exhibit 1440, was attached to that memorandum; right?

A. That would seem to be correct.

Q. Now sir, has the tobacco industry opposed differential insurance premiums aimed at smokers?

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A. Not in my experience with them.
Q. Well sir, isn't it true that this document talks about that very thing as a policy?
A. I have no idea if this document was ever approved. I do know that I have never seen this document in connection with my work, and I am not aware of any issue raised at any level of government in this state regarding the question addressed by this proposal.
Q. Well sir, according to Exhibit 1440, the plan was cleared by Covington & Burling and Shook, Hardy & Bacon; right?
A. They're good lawyers, but they're not The Tobacco Institute.
Q. Sir, according to this document, the plan, that's Exhibit 1441, was cleared by Covington & Burling and Shook, Hardy & Bacon; right?
A. Exhibit 1440 says that that's the case.
Q. All right. And sir, you, as the tobacco industry's spokesperson here today, cannot tell me whether this plan was ever approved?
A. I cannot tell you that because I have never seen it in connection with any of my work with The Tobacco Institute.
Q. Now sir, you have no evidence that this plan was

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not approved; right?

A. I have no evidence that it was approved.

Q. No, sir, that wasn't my question.

You have no evidence that this plan wasn't approved; do you?

A. I have --

I do not.

Q. Now sir, this plan refers to going to the commissioner of a variety of states, the insurance regulator for a variety of states, to talk to them about unfair insurance premiums directed at smokers; right?

A. I have never read the document and I have no idea what it suggests that we do.

Q. All right. Well, if you look at the page that ends with Bates number 542 of Exhibit 40 -- 1441, there are tactics listed; right?

A. That's the title on the top of the page.

Q. All right. Why don't you take a moment and review the tactics that are listed.

A. I've read the pages that you suggested.

Q. All right. Sir, among the tactics is -- is suggested that the tobacco industry work through national associations to establish relations with state insurance regulators; right?

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MR. FLYNN: Again I object, it speaks for itself.
A. The document says that.
Q. And if we turn to page -- the page that ends with Bates number 545, we see the name of Thomas H. Borman, who is Minnesota's insurance commissioner; right?
A. I see a list of several insurance commissioners, and Thomas H. Borman's name is on that list.
Q. And he is Minnesota's insurance commissioner?
A. He is not Minnesota's.
Q. Was. I'm sorry, he was Minnesota's insurance commissioner; wasn't he?
A. My guess would be that at the time this document was written, he was.
Q. All right. And it's true, isn't it, that The Tobacco Institute's person who was hired to perform this -- I'm sorry, strike that.
The Tobacco Institute hired a person to institute this proposal; right?
A. Not to my knowledge.
Q. Do you have any --
A. In Minnesota? Not to my knowledge.
Q. Sir, you have knowledge that The Tobacco Institute hired someone to put this program into

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place; right?

MR. FLYNN: He just answered that.

A. I do not have that knowledge.

Q. I'm not talking about Minnesota, sir, I'm talking about nationally.

A. I have no knowledge that this program was ever approved by The Tobacco Institute. I've never seen this stuff before.

Q. Despite the fact it was designated, counsel didn't show it to you; is that right?

A. I did not review it.

MR. FLYNN: Objection. Don't worry -- let him worry. We'll worry about that. He hasn't seen it, he said. Go on.

A. More importantly, I haven't seen it in connection with my work with The Tobacco Institute.

Q. So you have no --

You can't tell us as you sit here today as The Tobacco Institute spokesperson whether this document, which was designated for use in this deposition, was ever put into place.

A. I have no knowledge that any of this proposal contained in Plaintiffs' Exhibit 1441 was ever even approved by The Tobacco Institute, let alone put into place.

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Q. Now sir, did The Tobacco --

MR. FLYNN: You've answered.

Q. -- Institute ever lobby the National Association of Insurance Commissioners on the subject of differential premiums?

A. Not to my knowledge.

Q. You just don't know one --

A. I don't know.

Q. -- way or the other; do you?

A. I don't know.

Q. Sir, you said that --

You've said several times that you have no knowledge of the differential premium issue arising here in the state of Minnesota. Are you aware of it arising elsewhere?

A. I am not aware of it arising elsewhere.

Q. Well is it The Tobacco Institute's policy that cigarette smokers should not have higher insurance premiums than nonsmokers?

A. I don't know if that's The Tobacco Institute's policy. It is not an issue that I have ever addressed.

Q. Do you know if The Tobacco Institute has ever argued that cigarette -- I'm sorry, strike that.

Are you aware if The Tobacco Institute has ever

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argued to any regulator that there should not be a differential premium for smokers versus nonsmokers?

A. I am not aware of that argument being made.

Q. You just don't know of any circumstance where that has occurred.

A. I -- I do not know of any circumstance where that has occurred.

As I search my memory, the only connection with the issue of insurance had to do -- there was a clause, I believe, in a bill that was passed several years ago, four, five, six years ago, dealing with privacy and an employer's ability to fire someone for smoking at home off the work place, where that issue was raised, and I believe that we supported a provision in that bill to specifically allow differential rates. That's one of the reasons this really makes no sense to me.

To the best of my knowledge, that is the only connection that I recall between tobacco and insurance rates, and it's the opposite of what you're attempting to put forward here.

Q. Well sir, if we turn back to Exhibit 1440, it says in the second paragraph, "The objective is simple, to discourage unfair insurance practices against smokers."

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Has The Tobacco Institute ever engaged in activities where it has encouraged there not to be differential insurance premiums for smokers versus nonsmokers?

A. I am not aware of any activity by The Tobacco Institute in that area. I'm not aware of --

I personally am not aware of any activity in that area.

Q. All right. And sir, have you ever heard the term "The Smokers Caucus" used with reference to the Minnesota legislature?

A. Not to my recollection.

Q. Sir, show --

MS. WIVELL: I'm going to have the court reporter mark this.

(Plaintiffs' Exhibit 1442 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1442, this is a document Bates numbered TIMN457679; right?

A. Correct.

Q. All right. And it says --

It makes reference in the last sentence of the second paragraph on the first page to "...the

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Governor has targeted -- was targeted to receive phone calls from disgruntled Smoker Caucus members;" right?

A. That's what it says. I have no idea what it means.

Q. You've never heard of -- of The Smokers Caucus?

A. I don't remember ever using the phrase and I don't remember, frankly, ever hearing the phrase. I don't know what it means.

Is it a group of citizens who smoke? I don't know.

Q. That's what I'm trying to find out, sir.

A. I don't know.

Q. But you don't know.

A. I do not know.

Q. All right, sir, you told us at the beginning of this deposition, I think -- and I'd like to try and find my notes here, let's see if I can remember correctly -- that when you were dealing with the legislature, you wanted to be full, fair and honest. Do you recall saying something to that effect?

MR. FLYNN: I think the record speaks for itself. I don't remember that, but if it's there, it's there.

A. I don't remember it, but it's certainly what one

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would strive to do.

Q. Would you agree that -- let me back up again.

Have you ever asked to see any internal tobacco industry documents on smoking and health?

A. No, not --

I do not recall ever asking to see any of those. I've been exposed to what appears in the press the same as everybody else. I don't recall ever requesting to see a specific document.

Q. Why not?

A. Never had occasion to do it.

Q. Well, after reading about some of these documents that you've seen in the press, have you ever asked The Tobacco Institute to see some of them?

A. I'm not a scientist. I'm not trained as a scientist. I don't --

I think like most of the American population, I -- the information that I have is the same information that everybody else has. It's -- there's not a lack of information on the -- on the topic.

Q. Well isn't it important to you to know whether the information you're providing to policy makers is truthful?

MR. FLYNN: I object, it's argumentative in that it assumes he provided health-related

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information, which hasn't been established.

A. I --

Of course I -- I strive that the information that I provide to anybody is honest and truthful. It's part of being a responsible human being.

Q. Well sir, I ask again: Isn't it important for you to know whether the information that you're providing to policy makers in the state of Minnesota is truthful?

A. Of course.

Q. And didn't you want to have as much information as possible when you talked to policy makers about the subjects that you were addressing with them?

A. I have as much information as I think I need to get that job done. I don't need to read --

I mean, my God, do you know how many millions of pages are printed on the issue we're discussing? No one could read all of it.

Q. Well sir, wasn't it important --

A. And I wouldn't understand most of it.

Q. Wasn't it important for you to seek out the information that your employer might have on smoking and health so that you could talk to the legislators about the issues?

A. My responsibility, as I see it, is to provide

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legislators with information that they want, and I think for the most part that that was done.

Q. Well you wanted to be complete in providing them this information; didn't you?

A. I think I have been. I don't recall a complaint from a legislator ever that I have not been complete.

Q. Well sir, how about the issue of marketing to minors and sales to minors, did you ever ask for information that the tobacco industry had about marketing to youth?

A. It is very --

It is very clear, at least to me, that the position of this industry is that we do not -- we oppose the use of this product by people under the age of 18. That -- I mean it doesn't --

You don't have to have a lot of research to understand that point. That's a pretty simple concept.

Q. Have you ever seen any marketing documents that address the issue of whether or not groups under the age of 18 were targeted --

A. I have seen materials that we use in training clerks, Operation I.D., We Card. That's the kind of information that I've seen.

MR. FLYNN: Just for the record, it's now

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2:20. At 2:30 this is going to be done, over, so I'm giving you another --

You got 10 minutes left, and that's more than enough under any reading of the agreement, Ms. Walburn's statement, the time for Mr. Merryman's deposition.

Q. Now sir, you intended that the policy makers that you spoke to on behalf of the tobacco industry believed what you say; right?

A. That's the general hope.

Q. And it would be reasonable --

A. On -- on behalf of any client.

Q. Well we're focusing on the Tobacco Institute here -- or the tobacco industry here today.

Wouldn't you agree that it -- it would be reasonable for policy makers to rely on the information that you provided them during your lobbying activities?

A. I think it's unreasonable to assume that I'm the only person providing them with information. I think that's an unreasonable assumption.

Q. I'm -- I --

A. Because I've never seen a legislative issue, tobacco or otherwise, where there weren't at least two sides.

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Q. Oh, I understand that, sir, but I'm talking about the information that you, sir, and other tobacco lobbyists provided to legislators. Let me rephrase the question.

It would be reasonable, wouldn't it, for policy makers to rely on the information provided by the tobacco industry's lobbyists?

A. To the extent that that -- that information is provided, that would be a reasonable assumption.

Q. And sir, it's reasonable, isn't it, for the members of the public to rely on the information provided by The Tobacco Institute; isn't it?

A. Again, the members of the public receive information from innumerable sources on this subject.

Q. I understand that, but that's not my question. I'm going to move to strike as non-responsive.

My -- my question is simply this: It would be reasonable, wouldn't it, for members of the public to rely on the information provided by The Tobacco Institute?

A. I think members of the public make up their information -- their minds on information provided by any number of groups, including the Tobacco Institute. Some people may rely on it, others may not; that's not something I have any control over.

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Q. All right. Now are you aware of any instance where anyone lobbying on behalf of The Tobacco Institute has ever admitted to any policy maker here in the state of Minnesota that cigarette smoking causes disease?

MR. FLYNN: Objection, it's argumentative that they addressed the subject, but go ahead.

A. I don't have any personal knowledge of any kind of a statement like that.

Q. Well, as the person who is speaking here today as the spokesperson for The Tobacco Institute, are you aware -- can you direct us to any instance where a witness on behalf of The Tobacco Institute has ever admitted to a policy maker that cigarette smoking causes disease?

MR. FLYNN: Objection, that's so vague and ambiguous and broad --

A. I can't recall any situation where that question has been asked, and I certainly cannot recall who it might have been asked of or the circumstances. I don't know that that question has been asked to anyone.

Q. All right. Well my question wasn't about whether the question's been asked, my question is about whether The Tobacco Institute or any of its

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lobbyists has ever admitted to a policy maker in the state of Minnesota that cigarette smoking causes disease.

MR. FLYNN: It's been asked and answered.

A. I don't know that that question has ever been asked, which makes it highly unlikely an answer has ever been given.

Q. You cannot point me to one circumstance where someone on behalf of the tobacco industry in lobbying activities in the state of Minnesota has ever told a policy maker that cigarette smoking causes disease.

A. I cannot point you to such a place.

Q. All right. Have --

Or can you point me to such an instance where a lobbyist on behalf of the tobacco industry in the state of Minnesota has ever admitted to a policy maker that cigarette smoking was addictive?

MR. FLYNN: Same objection. It assumes the subject arose without a foundation.

A. I don't --

I have no recollection of such a statement.

Q. Now sir, --

A. Or such a --

Q. -- can you direct me to any instance where a lobbyist for the tobacco industry in this state has

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ever told a policy maker here that the cigarette manufacturers used ammonia to free up nicotine in cigarettes?

A. I have no recollection of such a question being asked or answered.

Q. Now sir, has anyone from the tobacco industry ever told a policy maker here in the state of Minnesota that people who switch to so-called low tar/low nicotine cigarettes compensate when they smoke?

A. I have no recollection of that question ever being asked of anyone in the industry.

Q. Well I'm not asking you whether the question was asked, I'm asking you whether anyone in the industry ever has told a policy maker here in the state of Minnesota that cigarette smoking --

A. I --

Q. Let me finish, sir.

A. Sorry.

Q. -- cigarette smokers who switch to so-called low tar/low nicotine cigarettes have actually compensated by -- and inhale more components of cigarette smoke?

A. I have no recollection of such a statement being made.

Q. Sir, you want the public to believe what you

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say; don't you?

MR. FLYNN: Objection, it's argumentative. He's not here for the public. He's a lobbyist.

A. I -- I don't do speeches to the public. I don't --

It's not something that I deal with.

Q. Well you would agree that you want the people that you direct your lobbying activities to on behalf of -- of the tobacco industry to believe what you say.

A. That is true.

Q. All right. Sir, do you have any knowledge of discussions that have taken place recently with legislators about trading a cigarette tax for elimination of disclosure of certain ingredients on cigarettes?

MR. FLYNN: I -- I'm going to request that --

If this is after this lawsuit was filed, it's my understanding that everything since then is not material or relevant. Isn't that the ground rule of this thing?

MR. DAVIES: Yes.

MR. FLYNN: So if this -- I -- I --

If this occurred in the last year or two, I'd

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ask you not to -- to exclude that period from answering your question.

MS. WIVELL: Well I would like, Mr. Flynn, you to know for the record that witnesses for the state of Minnesota were asked those questions.

MR. FLYNN: Did you let them answer?

Well my position is that I'm asking you to exclude the last few years after this suit got filed from the question, because it has nothing to do with anything involved in this suit. Answer the question with that restriction.

A. Excluding time since this suit was filed, I am not aware of that situation.

Q. You're aware that last year the state of Minnesota introduced a bill -- or there was legislation introduced in the state which was passed which would require the -- no, strike that. Sir -- or I'm sorry.

MS. WIVELL: For the record, I -- at this point I have additional questions, but I cannot ask them because of the witness's lack of information. I believe it has become apparent during this deposition that the witness does not have sufficient information or knowledge with regard to the noticed topic, and he was not properly prepared and did not properly

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prepare for this deposition. I have requested from time to time during this deposition either the information or that the wit -- the information be obtained, and counsel for the defendants has refused to do so.

The counsel for the defendants has also indicated that he is going to stop this deposition at this time, and I would like the record to reflect that I am not terminating the deposition but I am keeping the record open because we intend to look at the issue of whether The Tobacco Institute provided a knowledgeable deponent as required pursuant to the rules and to the notice of the deposition.

MR. FLYNN: Well the time has not run, so you want to keep asking him questions, go ahead. If you want to stop it and bring the court what you just talked about, that's your choice.

MS. WIVELL: So you're not going to terminate the deposition, Mr. Flynn?

MR. FLYNN: You've got time left. If you want to use it, go ahead. You got five minutes left according to my count.

MS. WIVELL: Well at this point in time, based on his lack of information, we will close the day. We will not close the record.

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MR. FLYNN: Well you do --

It's our position the deposition is over, and if you want to move to reopen it or renew it on whatever basis you want to, that's your choice. The record reflects our positions.

And I'm going to ask you if you want to --

Does anybody else have any questions on behalf --

MR. BALLINTINE: No.

MR. FLYNN: Do you want to waive the reading and signing of this deposition?

THE WITNESS: I'll waive.

MR. FLYNN: Okay. All right. You can --

THE REPORTER: Off the record, please.

(Deposition recessed at 2:24 o'clock p.m.)

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C E R T I F I C A T E

I, Richard G. Stirewalt, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of DAVID M. HORAZDOVSKY at the time and place aforesaid; and that the foregoing transcript consisting of pages 1 through 214 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Minneapolis, Minnesota, this 16th day of October, 1997.

RICHARD G. STIREWALT
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, DAVID M. HORAZDOVSKY, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 1 through 214, and that said transcript is a true and correct, full and complete transcription of my deposition except:

DAVID M. HORAZDOVSKY
Deponent

Sworn and subscribed to before me this day of , 1997.

Notary Public

My commission expires .

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